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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–37]

Amendment to Class E Airspace; Ava, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Bill Martin Memorial Airport, Ava, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 13 and GPS RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve Bill Martin Memorial Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 13 and GPS RWY 31 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 13 and GPS RWY 31 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 23, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–37, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 13 and GPS RWY 31 SIAPs to serve the Bill Martin Memorial Airport, MO. The amendment to Class E airspace at Ava, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Bill Martin Memorial Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Althought this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–37.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulations is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Ava, MO [Revised]

Ava, Bill Martin Memorial Airport, MO
(Lat 36°58′19″N., long. 92°40′55″W.)
Bilmart NDB
(Lat 36°58′11″N., long. 92°40′39″W.)
Dogwood VORTAC
(Lat 37°01′24″N., long. 92°52′37″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bill Martin Memorial Airport and within 1.8 miles each side of the 107° radial of the Dogwood VORTAC extending from the 6.3-mile radius to the VORTAC and within 2.6 miles each side of the 142° bearing from the Bilmart NDB extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21029 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–38]

Amendment to Class E Airspace; Lyons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lyons-Rice County Municipal Airport, Lyons, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17R and GPS RWY 35L Standard Instrument Approach Procedures (SIAPs) to serve Lyons-Rice County Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17R and GPS RWY 35L SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17R and GPS RWY 35L SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 23, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–38, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17R and GPS RWY 35L SIAPs to serve the Lyons-Rice County Memorial Airport, KS. The amendment to Class E airspace at Lyons, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Lyons-Rice County Municipal Airport, KS, will provide additional controlled airspace for airspace operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–38.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Lyons, KS [Revised]

Lyons-Rice County Municipal Airport, KS
(Lat. 38°20′34″N., long. 98°13′37″W.)
Lyons-NDB
(Lat. 38°20′50″N., long. 98°13′37″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lyons-Rice Municipal Airport and within 2.6 miles each side of the 348° bearing from the Lyons NDB extending from the 6.5-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21030 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–26]

Amendment to Class E Airspace; Rolla/Vichy, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Rolla/Vichy, MO.

DATES: The direct final rule published at 64 FR 31118 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 10, 1999 (64 FR 31118). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21035 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–24]

Amendment to Class E Airspace; Emporia, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Emporia, KS.

DATES: The direct final rule published at 64 FR 33012 is effective on 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT:
Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 21, 1999 (64 FR 33012). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such as adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 5, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–21036 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 341, 342, 346, 357, 362, 385

[Docket No. RM99–1–000; Order No. 606]

Revisions to Oil Pipeline Regulations

Issued August 4, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing oil pipelines. The regulations to be modified or deleted are located in 18 CFR Parts 3, 341, 342, 343, 346, 357, 362, and 385. These revisions are intended to clarify the Commission's regulations and bring them up to date.

EFFECTIVE DATE: The regulations are effective September 15, 1999.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:
Travis R. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations governing oil pipelines at 18 CFR Parts 341, 342, 343, and 346 to remove various provisions that are either outdated or in conflict with other oil pipeline regulations. The goals of these revisions are to clarify the Commission's regulations and bring them up to date. The Commission is also revising 18 CFR Parts 3, 357, 362, and 385 to conform to the other changes adopted here.

II. Background

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission (ICC) to the Commission pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act).[1] At the time the DOE Act transferred jurisdiction over oil pipeline rates to the Commission, the regulations governing oil pipelines were located in the ICC's regulations at Title 49 of the Code of Federal Regulations (CFR). Initially, the Commission ordered that the regulations concerning oil pipelines remain in effect until modified by the Commission. In Order No. 119,[2] the Commission started transferring some of the ICC's oil pipeline regulations from Title 49 of the Code of Federal Regulations to the Commission's regulations in Title 18. Parts 357[3] and 362[4] are among some of the Commission's current regulations that

[1] Department of Energy Organization Act, 42 U.S.C. 7155 and 7172(b) (1988).

[2] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (Jan. 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (Dec. 19, 1980).

[3] Part 357 addresses the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file.

[4] 18 CFR Part 362 sets forth the various requirements for valuation.

were adopted from this initial transfer. In Order No. 225,[5] the Commission adopted the ICC's rules pertaining to paper hearings called the ''modified procedure,'' currently codified at 18 CFR 385.1404 through 385.1414, and to *ex parte* communications, presently located at 18 CFR 385.1415, from 49 CFR Part 1100. Also, pursuant to Order No. 225, the Commission moved all of its Rules of Practice and Procedure from 18 CFR Part 1 to 18 CFR Part 385. Notwithstanding some limited revisions, most of the provisions in 18 CFR Parts 357, 362, and 385 are the same as they were in Title 49.

The Energy Policy Act of 1992 (Act of 1992) required the Commission to promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines, and to streamline its procedures in oil pipeline proceedings.[6] Pursuant to Congress' directive in the Act of 1992, the Commission issued Order No. 561[7] and two companion rulemakings, Order Nos. 571[8] and 572[9]. In Order No. 561, the Commission established a simplified and generally applicable index-methodology for oil pipelines to change their rates and also provided alternatives to this methodology. In Order No. 571, the Commission addressed a cost-of-service rate filing alternative for oil pipelines. In Order No. 572, the Commission addressed market-based rates for oil pipelines. These rulemakings also included new rate filing requirements and procedural reforms to reflect the new ratemaking methodologies, and streamlined the Commission's internal processes for oil pipelines.

At the time the Commission adopted changes to its ratemaking methodologies and procedural requirements, it intended that its new regulations would supersede existing procedural rules that were in conflict and do away with those that were no longer necessary, such as those describing the modified procedure. The final rules, however, did not take steps to remove these outdated regulations. As a result, the current Commission regulations governing oil pipelines include both recent provisions adopted or modified pursuant to the Act of 1992 and conflicting regulations adopted from the ICC which have been superseded, unutilized, or are inconsistent.

On October 20, 1998, the Commission issued a Notice of Proposed Rulemaking in Docket No. RM99–1–000.[10] The Commission received comments from the Association of Oil Pipelines (AOPL).

III. Public Reporting Burden

The Commission believes that there will be no impact on the public reporting burden from the elimination of outdated and nonessential regulations, and the related modification of other regulations. Because the regulations being removed are outdated, they effectively ceased being a reporting burden years ago. As for the regulations being modified, they are simply clarifying, not augmenting, reporting requirements.

IV. Discussion

A. Part 341

Part 341 relates to the requirements for preparing, filing, and withdrawing oil pipeline tariffs. Section 341.6(3) pertains to the rules for partial adoption by a carrier of another carrier's tariffs. In the NOPR, the Commission proposed to amend this section by removing duplicative language from the provision that now requires a carrier to state the effective date of an adoption notice twice in a tariff supplement required to be filed with the Commission. The Commission did not receive any adverse comments in response to this proposal, so the Commission will implement this modification in its final rule.

Section 341.7 addresses the requirements for concurrences. The Commission proposed to modify this section to specify the information that should be included in letters of transmittal accompanying the filing of a tariff publication containing a joint carrier. Under the proposed revision, letters of transmittal would be required to include the address, phone number, and contact for each joint carrier listed in the tariff publication. This is information that the Commission, as a routine matter, has required carriers to submit. The Commission concluded that including it as part of the regulations will inform carriers that such information must be included with their filings and make it unnecessary for carriers to supplement their filings later.

AOPL supports the Commission's proposal to include the foregoing information concerning joint carriers in the transmittal letter for a joint tariff. However, AOPL contends that the better place for this requirement is in the Commission's regulations on transmittal letters in section 341.2(c)(1).

The Commission will adopt the proposed modifications and revise section 341.2(c)(1), not section 341.7, as recommended by AOPL. While section 341.2(c)(1) is not a perfect fit, since the modification involves information requirements for transmittal letters concerning joint carriers, and section 341.2(c)(1) pertains to general information requirements for transmittal letters, it appears to be more appropriate to include it there, rather than in the section on concurrences.

B. Part 342

Part 342 pertains to the methods that may be used to establish initial rates, or change existing rates. Section 342.3 discusses rate changes under the indexing methodology. Section 342.3(b)(1) currently provides:

> Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

Under the revisions proposed in the NOPR, this section would require carriers filing for rate changes to include the prior rate ceiling level, in addition to the other information specified, in their letters of transmittal. Including the prior ceiling level will provide necessary information for the calculation of the index ceiling levels.

Section 342.3(b)(2) addresses the information required to be filed by carriers with their initial rate changes. It currently reads as follows:

> On March 31, 1995, or concurrently with its first indexed rate change filing made on or after January 1, 1995, whichever first occurs, carriers must file a verified copy of a schedule for calendar years 1993 and 1994 containing the information required by page

[5] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. (Regulations Preambles, 1982–1985) ¶ 30,358 (Apr. 28, 1982).

[6] The Energy Policy Act of 1992 (Act of 1992) contemplated two rulemakings—one on ratemaking methodology and another on streamlined procedures—and established separate deadlines for their completion. Energy Policy Act of 1992 Pub. L. No. 102–46, Title XVIII, 1801 to 1804, 106 Stat. 2776, 3010–3011 (codified as 42 U.S.C.A. 7172 note (West Supp. 1995)).

[7] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act of 1992, Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 30,985 (Oct. 22, 1993), *order on rehearing and clarification*, Order No. 561–A, 59 FR 40243 (Aug. 8, 1994) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,000 (July 28, 1994).

[8] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (Nov. 16, 1994) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,006 (Oct. 28, 1994), *order on rehearing and clarification*, Order No. 571–A, 60 FR 356 (Jan. 4, 1995) FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,012 (Dec. 28, 1994).

[9] Market-Based Ratemaking for Oil Pipelines, Order No. 572, 59 FR 59148 (Nov. 16, 1994), FERC Stats. & Regs. (Regulations Preambles, 1991–1996) ¶ 31,007 (Oct. 28, 1994), *order denying rehearing*, Order No. 572–A, 69 FERC ¶ 61,412 (Dec. 28, 1994).

[10] Revisions to Oil Pipeline Regulations, 63 FR 57081 (Oct. 26, 1998), IV FERC Stats. & Regs. ¶ 32,537 (Oct. 20 1998).

700 of the 1995 edition of FERC Form No. 6. If actual data are not available for calendar year 1994 when the rate change filing is made, the information for calendar year 1994 must be comprised of the most recently available actual data annualized for the year 1994. A schedule containing the information comprised of actual data for calendar year 1994 must be filed not later than March 31, 1995. Thereafter, carriers must file page 700 as a part of their annual Form No. 6 filing.

This section directs carriers to file schedules containing the information required by page 700 of the 1995 edition of FERC Form No. 6. on March 31, 1995, or concomitantly with its first indexed rate change filing made on or after January 1, 1995, whichever occurs first. Because the one-time need for the requirements of this section has passed, the Commission proposed to delete it in its entirety.

Section 342.3(d)(3) states that a carrier must compute its ceiling level each index year without regard to the rates filed pursuant to this section. In *Kaneb Pipeline Operating Partnership, L.P.*,[11] and subsequent proceedings, the Commission explained that because there are numerous pipelines that file rates measured in hundredths of a cent, all ceiling level calculations for all pipelines should be rounded [12] to the nearest hundredth of a cent. As this explanation applies to all calculations by all carriers under section 342.3, the NOPR proposed to add this explanation to the regulations to assist carriers in making accurate and complete filings.

AOPL considers the proposed changes to be positive ones for the oil industry. AOPL also suggests including in the regulation an example demonstrating how the rounding works. At the very least, AOPL requests that the Commission include a more detailed explanation of the rounding process.

The Commission will adopt the modification to section 342.3 in the final rule as proposed in the NOPR. The regulations as revised will include a thorough explanation for pipelines to use in calculating their ceiling levels. Adding further material would add unnecessary detail to the regulations. Oil pipelines have been calculating their ceiling levels for a number of years under the current regulations, and have done so successfully. The material added here will address the area where pipelines, for the most part, have miscalculated. No pipelines considered it necessary to file comments on the proposal, so the revision adopted here should prove satisfactory.

C. Part 343

Part 343 discusses procedural matters related to oil pipeline proceedings under part 342. Section 343.2 describes the requirements for filing interventions, protests, and complaints. The Commission will adopt the NOPR's proposal to correct section 343(c)(4) so that it references paragraphs (c)(1), (2), or (3) within the section, rather than paragraphs (b)(1), (2), or (3) as at present.

D. Part 346

Part 346 sets forth the filing requirements for oil pipelines that seek to establish cost-of-service rates as permitted under Part 342. Section 346.2(c)(7) states in part: ''If the presently effective rates are not at the maximum ceiling rate established under § 342.4(a) of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.'' The Commission will adopt the proposed revisions to section 346.2(c)(7) to correctly reference section 342.3, which is the section that sets forth the indexing methodology, rather than section 342.4(a), which describes cost-of-service rates.

E. Part 357

Part 357 concerns the annual special or periodic reports that carriers subject to Part I of the Interstate Commerce Act are required to file. Sections 357.3(a), (b), and (c) discuss the filing requirements for FERC Form No. 73. In Order No. 561, the Commission stated that it would be the oil pipeline carriers' responsibility in the future to perform depreciation studies to establish revised depreciation rates for oil pipelines. The specific requirements for such studies were adopted as Part 347 of the Commission's regulations in Order No. 571. Section 347.1(e)(5)(x) provides that a carrier must submit a Service Life Data Form (FERC Form No. 73) if the proposed depreciation rate adjustment is based on the remaining physical life of the properties. The Commission proposed that section 357.3(a) and (b), which address who must file FERC Form No. 73 and when the form must be submitted, be revised to include filings under section 347.1(e)(5)(x). The Commission also proposed to revise section 357.3(c) to update its mailing address. AOPL considers the proposed changes to be an appropriate clarification and the Commission will adopt them.

AOPL has pointed out that section 357.3(b), as proposed in the NOPR, contains a clerical error. The proposed section read as follows:

Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to part 347 of this chapter and as directed during a depreciation rate investigation. (emphasis added)

AOPL correctly noted that the word ''and'' should really be the word ''or.'' Accordingly, for the final rule, the Commission will adopt the proposal and will supplant the word ''and'' with the word ''or.''

F. Part 362

Part 362 sets forth the various requirements for valuation. Part 362 came into being as a result of Order No. 119,[13] which transferred the ICC's valuation section, in addition to several other sections pertaining to oil pipelines, from its regulations located at Title 49 of the Code of Federal Regulations to the Commission's regulations at Title 18. In Opinion No. 154,[14] the Commission intimated that it was considering abandoning the traditional ICC valuation formula; however, the Commission ultimately retained the valuation methodology. To the contrary, in Opinion No. 154–B,[15] the Commission adopted a methodology that is currently used in oil pipeline rate cases. This new methodology is predicated on a trended original cost (TOC) rate base and it does not follow the ICC's historic valuation rate base. Because Opinion No. 154–B rejects the valuation rate base methodology and thus eliminates the need for any valuation of oil pipelines, the filing of valuation reports as now required by Part 362 is no longer necessary. As a result, the Commission proposed to remove Part 362 from its regulations. Order No. 561 removed Parts 360 and 361 pertaining to reporting of data for valuation purposes. The proposal in the NOPR would complete the task of removing unnecessary valuation regulations.

AOPL welcomes removal of the rules on valuation, considering it to be long

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[11] Kaneb Pipeline Operating Partnership, L.P., 71 FERC ¶ 61,409 (1995).

[12] If the third decimal place number is five or more, the second decimal number should be rounded up; if the third decimal place number is four or less, the second decimal place number should be rounded down. Kaneb Pipeline. 71 FERC ¶ 61,409 (1995), at p. 62,617 n.6.

[13] Regulation of Interstate Oil Pipelines, Order No. 119, 46 FR 9043 (Jan. 28, 1981), FERC Stats. & Regs. (Regulations Preambles, 1977–1981) ¶ 30,226 (Dec. 19, 1980).

[14] Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied sub nom.*, Williams Pipeline Company v. Farmers Union Central Exchange, Inc., 105 S.Ct. 507 (1984). The Commissions's opinion appears at 21 FERC ¶ 61,260 (1982), *reh'g denied*, 21 FERC ¶ 61,086 (1983).

[15] Williams Pipeline Company, 31 FERC ¶ 61,377 (1985).

overdue. The Commission will adopt the proposed changes.

G. Part 385

Part 385 governs the Commission's rules of practice and procedure. Section 385.101(b)(3) excepts ICC rules from Part 385 in cases where regulations in the Commission's Rules of Practice and Procedure are inconsistent with ICC rules that were not replaced by a Commission rule or order. Because the Commission has promulgated and codified its own rules governing oil pipelines, this section has become unnecessary; therefore, the Commission proposed to remove this section from its Rules of Practice and Procedure. Section 385.102(a), which defines ''decisional authority,'' refers to authority or responsibility under ''49 CFR Chapter X.'' As this is a reference to ICC regulations which have been replaced, the Commission proposed the removal of this section.

Section 385.1403 discusses the filing requirements for protests to tariff filings. This section is inconsistent with, and has been superseded by, section 343.3, which was adopted in Order No. 561. Accordingly, the Commission proposed to delete section 385.1403 from the Commission's Rules of Practice and Procedure.

Sections 385.1405 through 385.1414 set out the modified procedure rules for oil pipeline proceedings. These rules provide that the Commission can order a proceeding to be heard under a modified procedure if it appears that substantially all important issues of fact may be resolved by means of written materials without an oral hearing. These rules were adopted from the ICC's procedural regulations, 49 CFR 1100, pursuant to Order No. 225.[16] The regulations concerning the modified procedure have been superseded by, and are in conflict with, procedures and filing requirements in Parts 342, 343, 346, and 347 adopted in Order Nos. 561, 571, and 572. Therefore, the Commission proposed in the NOPR to remove them. The Commission stated it would continue to use paper hearing procedures in individual cases where warranted, but that these procedures are not used frequently enough to warrant continuing to include them in the regulations. Since the Commission proposed to remove the modified procedure rules, the NOPR also proposed to remove section 385.101(b)(4)(I) because it excepts sections 385.1404 through 1414 from Part 385.

AOPL objects to the removal of the modified procedure provisions. AOPL contends that inclusion of the rules, even if only used occasionally, may be of benefit to parties and the Commission in rapidly resolving a dispute. AOPL claims that although the Commission could still order paper hearings when necessary, the Commission would be less likely to do so without a clearly defined template already in place that sets out the rights and obligations of the parties in conducting such a proceeding. AOPL also argues that a paper hearing could prove beneficial to quickly resolving a complaint proceeding that is clear as to the issue in dispute, but unclear as to an appropriate resolution.

The Commission's modified procedure provisions have become outdated as the result of changes to the Commission's procedural regulations that specify resolution paths to be followed in particular instances. For example, the regulations at section 343.5 provide that the Commission may require parties to enter into good faith negotiations to settle oil pipeline rate matters and specify that the Commission will refer all protested rate filings to a settlement judge for recommended resolution. The Commission also has adopted new complaint procedures designed to encourage and support consensual resolution of complaints and otherwise ensure that complaints are resolved in a timely and fair manner. Thus, AOPL's concerns about there being in place procedures that recognize the rights and obligations of parties in large part have already been addressed. For those few instances where a proceeding may not fit neatly into an established resolution process, the Commission will be able to devise a procedure to ensure resolution of the dispute in a manner that best serves all.[17] Such a procedure could include a paper hearing process through which issues of material fact could be resolved by means of written statements. The Commission therefore considers the modified procedure regulations to be no longer necessary and will adopt the revisions proposed in the NOPR.

Some of the Commission's regulations include references to the Oil Pipeline Board. Section 385.102, the definitions section, contains Oil Pipeline Board references in paragraphs (a) and (e)(2). Part 3 pertains to organization, operation, information and requests, and it also refers to the Oil Pipeline Board. Section 385.502(a)(3), rules concerning the initiation of a hearing, contains an Oil Pipeline Board reference. Section 385.1902, rules for appealing staff action, also makes reference to the Oil Pipeline Board. Since the Commission abolished the Oil Pipeline Board in Order No. 561, the Commission proposed to remove all references to the Oil Pipeline Board, and adopts that proposal here.

H. AOPL's Suggestions

Finally, in addition to commenting on the revisions proposed in the NOPR, AOPL, on behalf of the oil pipeline industry, requests that the Commission implement two additional modifications in the final rule. First, as a reflection of the current way in which carriers and their shippers conduct business, AOPL suggests that the Commission modify the definition of ''posting'' or ''post'' in section 341.0(a)(7), the definitions and applications section, by allowing the placement of a carrier's tariff on the Internet to serve as an alternate means of ''posting.''

AOPL's final suggestion is for the Commission to delete section 385.208, which pertains to notices of protests to tentative oil pipeline valuations. According to AOPL, the sole purpose of this section was to permit objections to valuations of oil pipeline companies, which are no longer conducted.

The Commission finds that both of AOPL's suggestions are consistent with the goals of this rulemaking and thus will integrate them into the final rule. AOPL's suggestion to allow posting on the Internet as an alternative recognizes the growing availability and use of electronic media as a new way of conducting business. The change also will not impose a requirement or burden on pipelines as it is an alternative and wholly voluntary; thus, the Commission considers it unnecessary to request comment before adopting the change. The Commission will also delete section 385.208. As was stated by AOPL, this section is wholly germane to objections to oil pipeline valuations, which are no longer performed.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment

[16] Revisions of Rules of Practice and Procedure to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. (Regulations Preambles, 1982–1985) ¶ 30,358 (Apr. 28, 1982).

[17] *See, e.g.*, Express Pipeline Partnership, 75 FERC ¶ 61,303 (1996) (holding that the Commission will establish paper hearing procedures to address whether to approve proposed rates and a rate structure as a condition precedent to construction of a new oil pipeline); Platte Pipe Line Company, 78 FERC ¶ 61,307 (1997) (holding that the Commission will establish a technical conference to examine issues raised by the pipeline's filing); and *Sinclair Oil Corporation* v. *Platte Pipe Line Company*, 87 FERC ¶ 61,259 (1999) (holding that the Director of the Commission's Dispute Resolution Service is directed to arrange a process to foster negotiation and agreement).

or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[20] Therefore, neither an Environmental Impact Statement nor an Environmental Assessment is necessary and will not be prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[21] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VII. Information Collection Statement

Office of Management and Budget (OMB) regulations[22] require that OMB approve certain information collection requirements imposed by agency rule. Since this rule does not impose new regulations and has no impact on current information collections, there is no need to obtain OMB approval as to the deletion and modification of these regulations. Nevertheless, the Commission is submitting a copy of the final rule to the OMB for informational purposes.

VIII. Effective Date and Congressional Notification

The regulations are effective September 15, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[23] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[18] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. (Regulations Preambles, 1986–1990) ¶ 30,783 (Dec. 10, 1987).

[19] 18 CFR 380.4.

[20] 18 CFR 380.4(a)(2)(ii).

[21] 5 U.S.C. 601–612.

[22] 5 CFR Part 1320.

[23] 5 U.S.C. 801 (Supp. III 1997).

List of Subjects

18 CFR Part 3

Organization and functions (Government agencies).

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 342

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 362

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and record keeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Parts 3, 341, 342, 343, 346, 357, 362, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 3—[REMOVED AND RESERVED]

1.–2. Part 3 consisting of § 3.4 is removed and reserved.

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

3. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

4. Section 341.0 is amended by revising paragraph (a)(7) to read as follows:

§ 341.0 Definitions; application.

(a) * * *

(7) *Posting* or *post* means making a copy of a carrier's tariff available during regular business hours for public inspection in a convenient form and place at the carrier's principal office and other offices of the carrier where business is conducted with affected shippers, or placing a copy on the Internet in a form accessible by the public.

* * * * *

5. Section 341.2 is amended by revising paragraph (c)(1) to read as follows:

§ 341.2 Filing requirements.

* * * * *

(c) * * *

(1) *Contents.* Letters of transmittal must describe the filing and explain any changes to the carrier's rates, rules, terms or conditions of service; state if a waiver is being requested, and specify the statute, section, regulation, policy or order requested to be waived; and identify the tariffs or supplement numbers and the proposed effective date of the tariff publication. Carriers must provide to the Commission, in the letter of transmittal accompanying the filing of a tariff publication containing a joint carrier, the address, phone number, and a contact for each joint carrier listed in the tariff publication.

* * * * *

6. Section 341.6 is amended by revising paragraph (d)(3) to read as follows:

§ 341.6 Adoption rule.

* * * * *

(d) * * *

(3) The former owner must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective [date of adoption notice] this tariff became the tariff of [legal name of adopting carrier] for transportation movements [identify origin and destination points], as per its adoption notice FERC No. [number].

* * * * *

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

7. The authority citation for Part 342 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7532; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

8. Section 342.3 is amended by revising paragraph (b) in its entirety, and paragraph (d)(3) to read as follows:

§ 342.3 Indexing.

* * * * *

(b) *Information required to be filed with rate changes.* The carrier must comply with Part 341 of this title. Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, the prior ceiling level, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

* * * * *

(d) * * *

(3) A carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section. All carriers must round their ceiling levels each index year to the nearest hundredth of a cent.

* * * * *

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

9. The authority citation for Part 343 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

10. Section 343.2 is amended by revising paragraph (c)(4) to read as follows:

§ 343.2 Requirements for filing interventions, protests and complaints.

* * * * *

(c) * * *

(4) A protest or complaint that does not meet the requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this section, whichever is applicable, will be dismissed.

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

11. The authority citation for Part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

12. Section 346.2 is amended by revising paragraph (c)(7) to read as follows:

§ 346.2 Material in support of initial rates or change in rates.

* * * * *

(c) * * *

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates. If the presently effective rates are not at the maximum ceiling rate established under § 342.3 of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

13. The authority citation for Part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

14. Section 357.3 is revised to read as follows:

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company requesting new or changed depreciation rates pursuant to Part 347 of this title if the proposed depreciation rates are based on the remaining physical life of the properties or if directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to Part 347 of this title or as directed during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review at the Commission's Public Reference Section, Room 2A, 888 First Street, NE, Washington, D.C. 20426.

SUBCHAPTER 5—[REMOVED AND RESERVED]

PART 362—[REMOVED AND RESERVED]

14a. Subchapter 5 consisting of part 362, Uniform System of Records and Reports of Property Changes, is removed in its entirety and reserved.

PART 385—RULES OF PRACTICE AND PROCEDURE

15. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 385.101 [Amended]

16. Section 385.101 is amended by removing paragraphs (b)(3) and (b)(4)(i), and redesignating paragraph (b)(4)(ii) as paragraph (b)(4).

17. Section 385.102 is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 385.102 Definitions (Rule 102).

* * * * *

(a) *Decisional authority* means the Commission or Commission employee that, at the time for decision on a question, has authority or responsibility under this chapter to decide that particular question.

* * * * *

(e) * * *

(2) With respect to any proceeding not set for hearing under subpart E, any employee designated by rule or order to conduct the proceeding.

* * * * *

§ 385.208 [Removed and reserved].

18. Section 385.208 is removed and reserved.

19. Section 385.502 is amended by removing paragraph (a)(3) and revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 385.502 Initiation of hearing (Rule 502).

(a) * * *

(1) Order of the Commission; or

(2) Notice by the Secretary at the direction of the Commission or under delegated authority.

* * * * *

§§ 385.1403 and 385.1405–385.1415 [Removed]

§§ 385.1404 and 385.1415 [Redesigated as §§ 385.1403 and 385.1404]

20. Sections 385.1403 and 385.1405 through 385.1414 are removed and sections 385.1404 and 385.1415 are redesignated paragraphs 385.1403 and 385.1404.

21. Section 385.1902 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

* * * * *

[FR Doc. 99–20574 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0571]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53) as a colorant for polymers intended for use in contact with food. This action responds to a petition filed by BASF Corp.

DATES: This regulation is effective August 16, 1999; written objections and requests for a hearing by September 15, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 27, 1998 (63 FR 40125), FDA announced that a food additive petition (FAP 8B4611) had been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposed to amend the food additive regulations to provide for the safe use of nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53) as a colorant for polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, the additive will achieve its intended technical effect, and therefore, that the regulations in 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 8B4611 (63 FR 40125). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 15, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * * *
Nickel antimony titanium yellow rutile (C.I. Pigment Yellow 53, CAS Reg. No. 8007–18–9).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: August 9, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21079 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0570]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of chrome antimony titanium buff rutile (C.I. Pigment Brown 24) as a colorant for polymers intended for use in contact with food. This action responds to a petition filed by BASF Corp.

DATES: This regulation is effective August 16, 1999; written objections and requests for a hearing by September 15, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 23, 1998 (63 FR 39582), FDA announced that a food additive petition (FAP 8B4608) had been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposed to amend the food additive regulations to provide for the safe use of chromium antimony titanium buff rutile (C.I. Pigment Brown 24) as a colorant for polymers intended for use in contact with food.

During the review of the petition, it was determined that the correct nomenclature for the colorant, in consonance with the Chemical Abstract Services Registry No. (68186–90–3), is chrome antimony titanium buff rutile. Accordingly, the colorant is listed correctly in the codified section of this document.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in 21 CFR 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 8B4608 (63 FR 39582). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 15, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * *	* * * *
Chrome antimony titanium buff rutile (C.I. Pigment Brown 24, CAS Reg. No. 68186–90–3).	For use at levels not to exceed 1 percent by weight of polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: August 9, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21080 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN 48–01–7273a; FRL–6416–8]

Approval and Promulgation of State Implementation Plan; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a December 31, 1998, request from the Minnesota Pollution Control Agency (MPCA) for new air pollution control requirements for the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). These requirements were submitted in the form of an Administrative Order (Order) and include revisions associated with the addition of a new stack, revised emission limits for numerous sources, and other changes. The revisions result in an overall decrease in allowable SO_2 emissions from the facility. The new requirements have been evaluated through a computerized modeling analysis and have shown that they will attain and maintain the National Ambient Air Quality Standard (NAAQS) for SO_2.

DATES: This direct final rule is effective on October 15, 1999, without further notice, unless we receive relevant adverse written comments by September 15, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Randall Robinson at (312) 353–6713 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Randall Robinson, Meteorologist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. Introduction

What Action Is EPA Taking Today?
Who Is Affected by This Action?
What Information Did the State Submit in Its Request?
What Are the National Ambient Air Quality Standards?
What Is an Administrative Order?
How Did the State Support Its Request for Marathon?
How Does This Action Change the Administrative Order for Marathon?
Why Is the Request Approvable?

II. EPA Action

III. Administrative Requirements

I. Introduction

What Action Is EPA Taking Today?

In this action, we are approving a revision to the Minnesota SO_2 SIP for Marathon. The revision is referred to as Amendment Four and amends the Order for Marathon to reflect revisions associated with the addition of a new stack and revised emission limits for numerous sources. Other changes included in Amendment Four are discussed later in this document and more fully in the technical review document.

Who Is Affected by This Revision?

The revision to Minnesota's SIP for SO_2 is site-specific and, thus, only affects Marathon.

What Information Did the State Submit In Its Request?

On December 31, 1998, the Minnesota Pollution Control Agency (MPCA) submitted to EPA a site-specific SO_2 SIP revision request for Marathon. The SIP revision for Marathon was submitted in the form of an Order amendment, and referred to as Amendment Four. Amendment Four revises the present Order for Marathon and replaces prior amendments, Amendment Two and Three, by incorporating changes in response to EPA comments on Amendment Two and Amendment Three. The MPCA had previously submitted Amendment Two and Amendment Three to EPA on November 26, 1996, and October 17, 1997, respectively. EPA provided comments to MPCA regarding Amendment Two and Amendment Three, but did not take any other action on those amendments to the administrative order.

The 30-day public notice for the Order amendment, Amendment Four, appeared in the St. Paul Pioneer Press on March 4, 1998. No one from the public commented on the proposed revisions or requested a public hearing.

What Are the National Ambient Air Quality Standards?

The EPA has established concentration levels for each of six pollutants, called criteria pollutants, that are protective of human health (primary standard) and welfare (secondary standard). The primary NAAQS for SO_2 is 0.03 parts per million (ppm) annual arithmetis mean, and 0.14 ppm maximum 24-hour average concentration, not to be exceeded more than once per calendar year. The secondary NAAQS for SO_2 is 0.50 ppm maximum 3-hour average concentration, not to be exceeded more than once per calendar year. See 40 CFR 50.4.

What Is an Administrative Order?

Each state is obligated by section 110(a) of the Act, 42 U.S.C. 7410, to develop a plan which provides for ''implementation, maintenance, and enforcement'' of the NAAQS promulgated by EPA. An Order is a mechanism which the state uses to enforce applicable requirements established either by State or Federal law. The Orders are used to enforce requirements needed to meet the applicable NAAQS.

How Did the State Support Its Request for Marathon?

The MPCA provided EPA with a computerized modeling attainment demonstration. The modeling analysis was required to evaluate whether the air impacts from the proposed revisions will still provide for attainment of the NAAQS for SO_2. Details of the analysis are presented below.

Air Quality Model

The analysis utilized the Industrial Source Complex Model-Short Term (ISCST3) model. (The Integrated Gaussian Model (IGM), which has been demonstrated to be equivalent to ISCST3, was used to obtain source contributions.) ISCST3 is recommended for regulatory applications for estimating short-term impacts from complicated sources (i.e., sources with special problems such as aerodynamic downwash). The ISCST3 model also contains the COMPLEX–I algorithms which allow for the prediction of ambient air impacts at receptors above stack top (i.e., complex terrain). Additionally, the ISCST3 model automatically implements the intermediate terrain policy which requires the user to predict concentrations on an hour-by-hour basis at receptors above stack top but below plume height using both a simple terrain model (ISCST3) and a complex terrain model (COMPLEX–I) and select the highest for each hour. This option was executed for the Marathon modeling.

Modeling Inputs

The SIP submittal revision submitted by the MPCA is specific to Marathon. The total ambient air impact from the revisions at the Company is the sum of the modeled impact from Company sources, modeled background sources from the Twin Cities area, and an unmodeled background value based on monitoring data. The value of the unmodeled background concentration is based on an analysis of historic monitored concentrations and has been used and approved in previous SO_2 SIP revisions. Marathon is located in the Mississippi River valley with bluffs exceeding the height of Marathon stacks. Consequently, weather data collected on-site was used to ensure representativeness. The modeling analysis used one year of meteorological data (1988) collected from a tower located at the facility. Concentrations were calculated over a receptor grid which featured 100 meter resolution. Concentrations calculated inside the fenced property boundary were not used in the analysis.

The modeling analysis used emission estimates based on maximum allowable emission rates (pounds of sulfur dioxide/hour and pounds of sulfur dioxide/mmBTU) and maximum design capacities (mmBTUs/hour). Stacks exceeding allowable good engineering practice stack height (GEP) were modeled using the calculated GEP height. Plume downwash due to building wake effects was also included in the analysis. The modeling was conducted in accordance with the general recommendations included in the Guideline on Air Quality Models, 40 Code of Federal Regulations part 51, appendix W. The results of the modeling are presented in the table below.

HIGH-SECOND-HIGH MODELED SULFUR DIOXIDE CONCENTRATIONS

[Micrograms/cubic meter]

Averaging time	Total concentration marathon+all background	NAAQS
Annual	65.1	80
24-hour	359.4	365
3-hour	946.5	1300

How Does This Action Change the Administrative Order for Marathon?

Amendment Four includes the following primary changes: (1) installation of a new sulfur reduction unit exhaust stack and subsequent rebuilding of one of two existing tail-gas incinerators, (2) a revised table of emission limits for various process and combustion equipment.

The table below lists the Emission Unit and the new emission limits, in pounds per hour and pounds per million British thermal units (BTU's) for those sources with revised emission limits.

NEW EMISSION LIMIT

Emission unit	lb/hr	lb/mmBTU
Process Steam Boiler	1.08	0.03
Crude Charge Heater	34.0	0.2834
Crude Vacuum Heater	1.20	0.03
Distillate Unifier Heater	1.41	0.03
Naphtha Unifier Heater	1.95	0.03
Platformer Charge Heater	1.95	0.03
Platformer Interheater #1	1.68	0.03
Asphalt Oxidizer	(*)	....
Crude Charge	52.2	0.90
Crude Charge Preflash A (New)	0.89	0.03
Crude Charge Preflash B (New)	0.89	0.03
Platformer Heater #2	1.08	0.03
Guard Case Reactor	1.70	0.03
Reactor Heaters #1 & 2	2.10	0.03
Reactor Heaters #4 & 4E	0.63	0.03
Reactor Heaters #3 & 4W	1.05	0.03
Reactor Charge Heater	1.38	0.03
Product Stripper Re-boiler	0.78	0.03
Reformer Heaters	3.48	0.03

* Removed.

Significant decreases in the pounds per hour emission limits occur at the crude charge heater (old limit=108 lb/hr), crude vacuum heater (old limit=23.4 lb/hr), and the crude charge plus preflash (old limit=105.5 lb/hr). Minor increases, less than 1 pound per hour, occur at other sources, mainly the heaters. Overall, the total allowable pounds per hour emissions have dropped from 6325 tons per year to 5698 tons per year.

The existing SIP for Marathon included emission limits specified during periods when the Shell Claus Offgas Treatment (SCOT) unit and the amine reduction unit (ARU) were undergoing regular scheduled maintenance. These maintenance period limits have been removed in Amendment Four. The limits associated with normal operating conditions and any other New Source Performance Standard (NSPS) limits apply at all times.

Other notable changes included in Amendment Four include:

(1) A requirement to keep records of calculated SO_2 emissions in pounds per hour.

(2) The addition of a diesel engine to pump water to the Alky unit during an emergency accidental release. Maximum emissions of 0.48 pound per hour SO_2.

(3) A restriction on steam air decoking more than one emission unit at the same time.

(4) Changing fuel oil sampling from a daily sample to a requirement to sample after receiving a transfer of fuel into their fuel supply tank, and a change from a weekly analysis of heating value of the fuel oil to quarterly.

(5) *Changes to other operating limits (Exhibits 1.1 and 1.4)*

Boiler 5—36.0 mmBTU/hr
Distillate Unifier Heater—47.0 mmBTU/hr
Naphtha Unifier Heater—65.0 mmBTU/hr
Platformer Charge Heater—65.0 mmBTU/hr
Platformer Interheater—56.0 mmBTU/hr
Crude Charge—58.0 mmBTU/hr
Crude Charge Pre—29.7 mmBTU/hr
Crude Charge Pre—29.7 mmBTU/hr
Platformer Heater #2—36.0 mmBTU/hr
Reactor Heaters 3 & 4W—35.0 mmBTU/hr
Modeled heat input values were added to the maximum heat input column

(6) *Changes to stack parameters (Exhibit 1.7).*

Modeled flow rates and temperatures were added

(7) *Changes not requiring a modification of the Administrative Order.*

Language was added which would allow certain changes to be made at the facility without obtaining a modified Order. A modification to the Order is not needed if the modification does not:

(A) Exceed any of the limits in Part I of the Order,

(B) Effect the stack parameters described in Exhibit 1.7, unless the change is made to a unit that no longer will be allowed to burn fuel oil (fuel oil supply disconnected),

(C) Result in an increase of 2.28 pounds of SO_2 per hour or more at any new unit.

Based on the modeled attainment demonstration submitted with the revision, these changes should not threaten the NAAQS. The limits on modifications identified in the Order should ensure that significant changes at the facility cannot occur without additional modeling showing that the NAAQS are protected. Additionally, language in the Order states that regardless of whether a modification of the order is required, the Company shall obtain a permit amendment if required by state or Federal law.

(8) *Recordkeeping revisions.*

An additional requirement to record the time period when burning fuel oil in New Source Performance Standard (NSPS) units.

(9) Two new continuous monitoring systems were installed to determine hydrogen sulfide content of commercial gas received from Northern States Power. These systems were installed at the crude heater and the reformer heaters.

(10) Name change from Ashland Petroleum Company to Marathon Ashland Petroleum, LLC.

(11) Property access restrictions. The company is required to maintain a fence to restrict public access around it's boundaries.

Other restrictions on operations, fuel use, and fuel quality remain in effect and unchanged from the previously Federally approved Order. The general compliance methodology consists of continuous emission monitors (CEMS), continuous monitoring systems (CMS), and fuel sampling and analysis.

Why Is the Request Approvable?

After review of the SIP revision request, EPA finds that Amendment Four meets the applicable requirements of Clean Air Act section 110(a) and that the revisions in Amendment Four have been shown to be protective of the applicable NAAQS.

II. EPA Action

EPA is approving the requested revision to the Minnesota SO_2 SIP for Marathon. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision in case written adverse comments are filed. This action will become effective without further notice unless the Agency receives relevant adverse written comments within 30 days from the date of publication. Should the Agency receive adverse comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to E.O. 13045 because it approves a state rule implementing a previously promulgated health or safety-based Federal standard, and preserves the existing level of pollution control for the affected areas.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: July 22, 1999

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(49) to read as follows:

§ 52.1220 Identification of plan

(c) * * *

(49) Approval—On December 31, 1998, the Minnesota Pollution Control Agency submitted a request for a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). The site-specific SIP revision for Marathon was submitted in the form of an Administrative Order (Order), and referred to as Amendment Four.

(i) Incorporation by reference.

(A) For Marathon Ashland Petroleum, LLC, located in St. Paul Park, Minnesota:

(*1*) Amendment Four to the administrative order, dated and effective December 22, 1998, and submitted December 31, 1998.

(ii) Additional material.

(A) A letter from Peder A. Larson to David Ullrich, dated December 31, 1998, submitting Amendment Four for Marathon Ashland Petroleum, LLC.

[FR Doc. 99–21012 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R1–052–7211a; A–1–FRL–6417–5]

Approval and Promulgation of Air Quality Implementation Plan; Connecticut; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut on February 7, 1996 and February 18, 1999, committing that the State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State, which had also adopted the California Low Emission Vehicle (CAL LEV) program. Auto manufacturers have agreed to sell cleaner vehicles meeting the National LEV standards throughout these States for the duration of the manufacturers' commitments to the National LEV program. This SIP revision is required as part of the agreement between States and automobile manufacturers to ensure the continuation of the National LEV program to supply clean cars throughout most of the country, beginning with 1999 model year vehicles in

Northeastern States and extending to other States beginning with 2001 model year vehicles.

DATES: This rule is effective on October 15, 1999 without further notice, unless EPA receives adverse comment by September 15, 1999. If we receive such comment, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), US Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, US Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460. In addition, the information is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. In addition, the program provides substantial harmonization of federal and California new motor vehicle standards and test procedures, which enables manufacturers to design and test vehicles to one set of standards nationwide. The National LEV program demonstrates how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

The National LEV program will result in substantial reductions in non-methane organic gases (NMOG) and nitrous oxides (NOx), which contribute to unhealthy levels of smog in many areas across the country. National LEV vehicles are 70% cleaner than today's model requirements under the Clean Air Act. This voluntary program provides auto manufacturers flexibility in meeting the associated standards as well as the opportunity to harmonize their production lines and make vehicles more efficiently. National LEV vehicles are estimated to cost an additional $76 above the price of vehicles otherwise required today, but it is expected that due to factors such as economies of scale and historical trends related to emission control costs, the per vehicle cost will be even lower. This incremental cost is less than 0.5% of the price of an average new car. In addition, the National LEV program will help ozone nonattainment areas across the country improve their air quality as well as reduce pressure to make further, more costly emission reductions from stationary industrial sources.

Because it is a voluntary program, National LEV was set up to come into effect, and will remain in effect, only if the Northeastern State and auto manufacturer participants commit to the program and abide by their commitments. The States and manufacturers initially committed to the program through opt-in notifications to EPA, which were sufficient for EPA to find that National LEV had come into effect. The National LEV regulations provide that the second stage of the State commitments is to be made through SIP revisions that incorporate the State commitments to National LEV in State regulations, which EPA will approve into the federally-enforceable SIPs. The National LEV regulations laid out the elements to be incorporated in the SIP revisions, the timing for such revisions, and the language (or substantively similar language) that needs to be included in a SIP revision to allow EPA to approve the revision as adequately committing the State to the National LEV program. In today's action, EPA is approving the National LEV SIP revision for Connecticut as adequately committing the State to the program. EPA expects to take similar actions for the other States that have elected to join the National LEV program in the future.

Connecticut has adopted a State clean vehicle program identical to the CAL LEV program (without the zero emission vehicle requirements) pursuant to section 177 of the Clean Air Act. The State has also modified that regulation accepting compliance with National LEV as an alternative for auto manufacturers to comply with the CAL LEV requirements. The State's regulation provides that for the duration of the State's participation in National LEV, manufacturers may comply with National LEV or equally stringent mandatory federal standards in lieu of compliance with a State program adopted pursuant to section 177. The regulation accepts National LEV as a compliance alternative for requirements applicable to passenger cars, light-duty trucks, and medium-duty trucks designed to operate on gasoline. The regulation further provides that the State's participation in National LEV extends until model year 2006, if by December 15, 2000, EPA adopts mandatory standards at least as stringent as the National LEV standards and such standards would apply to new motor vehicles beginning in model year 2004, 2005 or 2006. If EPA does not adopt such standards by that date, the State's participation in National LEV would extend only until model year 2004. Through these regulations, Connecticut has adequately committed to the National LEV program, as provided in the final National LEV rule.

The final National LEV rule also stated that if States submitted SIP revisions containing language substantively identical to the language in the regulations without additional conditions, and if the submissions met the Clean Air Act requirements for approvable SIP submissions, EPA would not need to go through notice-and-comment rulemaking to approve the SIP revisions. In the National LEV rulemaking, EPA already provided full opportunity for public comment on the language for the SIP revisions. Thus, as discussed in more detail in the final rule, the requirements for EPA approval are easily verified objective criteria. See 63 FR 936 (January 7, 1998). While EPA believes that it could have appropriately approved the Connecticut submission without providing for additional notice and comment, EPA nonetheless decided to take this action as a direct final rulemaking, which allows an opportunity for further public comment. Here, EPA is not under a timing constraint that would support a shorter rulemaking process, and thus EPA decided there was no need to deviate from the Agency's usual procedures for SIP approvals.

Final Action

EPA has evaluated the submitted SIP revision submitted by Connecticut and has determined that it is consistent with the EPA National LEV regulations and meets the section 110 requirements for SIP approvals. Therefore, EPA is approving the Connecticut low emission vehicle rule as submitted on February 7, 1996 and February 18, 1999, into the Connecticut SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 15, 1999 without further notice unless the Agency receives adverse comment by September 15, 1999.

If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments received in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments that does not already exist as a matter of State law. EPA is simply approving a State regulation under the Clean Air Act. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E. O. 12866, and does not involve an action that addresses environmental or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(79) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(79) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7, 1996 and February 18, 1999.

(i) Incorporation by reference.

(A) Connecticut regulation section 22a–174–36, entitled ''Low Emission Vehicles'' as dated and effective by determination of the Secretary of State on December 23, 1994.

(B) Connecticut regulation section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' as dated and effective by determination of the Secretary of State on January 29, 1999.

(ii) Additional material

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1996 submitting a revision to the Connecticut State Implementation Plan for the Low Emission Vehicle program.

(B) Letter from the Connecticut Department of Environmental Protection dated February 18, 1999 submitting a revision to the Connecticut State Implementation Plan for the National Low Emission Vehicle program to be a compliance option under the State's Low Emission Vehicle Program.

3. In § 52.385, Table 52.385 is amended by adding new entries in State citations for Section 22a–174–36, entitled ''Low Emission Vehicles'' and Section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' to read as follows:

§ 52.385 EPA—approved Connecticut Regulations

* * * * *

TABLE 52.385—EPA-APPROVED RULES AND REGULATIONS

Connecticut state citation	Title/ subject	Dates: Date adopted by State	Dates: Date approved by EPA	Federal Register citation	52.370	Comments/ description
*	*	*	*	*	*	*
22a–174–36	Low Emission Vehicles	12/23/94	August 16, 1999.	[Insert *FR* citation from published date].	(c)(79)	Approval of Low Emission Vehicle Program.
22a–174–36(g)	Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.	1/29/99	August 16, 1999.	[Insert FR citation from published date].	(c)(79)	Approval of Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program for the ''California'' low emission vehicle program adopted above.

TABLE 52.385—EPA-APPROVED RULES AND REGULATIONS—Continued

Connecticut state citation	Title/ subject	Dates		Federal Register citation	52.370	Comments/ description
		Date adopted by State	Date approved by EPA			
* * * * * * *						

[FR Doc. 99–21004 Filed 8–13–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI91–01–7322a; FRL–6414–7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a site-specific revision to the Wisconsin sulfur dioxide (SO_2) State Implementation Plan (SIP) SIP for Murphy Oil located in Superior, Wisconsin. The Wisconsin Department of Natural Resources (WDNR) submitted this SIP revision on February 26, 1999 in response to a request for an alternate SO_2 emission limitation by Murphy Oil. The rationale for the approval and other information are provided in this document.

DATES: This action is effective on October 15, 1999 without further notice, unless EPA receives relevant adverse comments by September 15, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Action Is EPA Taking Today?
B. Why Was this SIP Revision Submitted?
C. Why Can We Approve this Request?
D. What Is the Background for this Rulemaking?

A. What Action Is EPA Taking Today?

We are approving WDNR's February 26, 1999 request for a site-specific revision to the Wisconsin SO_2 SIP. Specifically, we are approving: (A) the SO_2 emission limits contained in Wisconsin Air Pollution Control Operation Permit No. 95–SDD–120–OP, issued by the WDNR to Murphy Oil, USA on February 17, 1999; and (B) a modeled attainment demonstration assessing the impact of the alternate SO_2 limits for Murphy Oil, located in Superior (Douglas County), Wisconsin.

B. Why Was this SIP Revision Submitted?

Murphy Oil owns and operates a petroleum refinery in Superior, Wisconsin. The categorical statewide emission limit that we had approved on May 21, 1993 for petroleum refineries is 0.8 pounds of SO_2 per million British Thermal Units (lbs/MMBTU). Also included in our May 21, 1993 final approval of Wisconsin's Statewide SO_2 rules was NR 417.07(5), which established the State's procedures for sources to obtain alternate emission limitations. However, in both our January 2, 1992 proposed rulemaking and our May 21, 1993 final action, we noted that Wisconsin had to submit for approval all relaxed State limits as site-specific SIP revisions pursuant to section 110 of the Clean Air Act. We also stated that any previous SIP limitations would remain in effect and enforceable until we approved the proposed relaxed limitations into the SO_2 SIP.

Both our alternative emission limit requirements and WDNR's NR 417.05(5) require, among other things, that before an alternate emission limit can be approved, it must be demonstrated that the proposed alternate limit will not delay attainment or prevent maintenance of the applicable National Ambient Air Quality Standards (NAAQS). Additionally, the federal requirement limits the demonstration to no more than 75 percent of the NAAQS. Murphy Oil has requested an alternate emission limit of 3.0 lbs/MMBTU for any combustion unit when combusting #6 fuel oil. The WDNR air quality modeling evaluates this alternate limit in comparison to the SO_2 NAAQS. Additional information is available in our June 6, 1997 Technical Support Document (TSD).

C. Why Can We Approve This Request?

We are approving the current SIP submittal as a Direct Final **Federal Register** document because the source has followed the procedures of Wisconsin State Rule NR 417.07(5) for obtaining alternate emission limits, which we approved on May 21, 1993 at 58 FR 29538. Our June 7, 1999 TSD contains details of the criteria Murphy Oil met to have the alternate emission limit approved. The State submitted modeling results incorporating the 3.0 lbs/MMBTU proposed alternative limit for two separate operating options, one with lower SO_2 emission limits and another with higher SO_2 emission limits. The NAAQS for SO_2 consist of a 3-hour level of 1300 micrograms per cubic meter ($\mu g/m^3$), a 24-hour level of 365 $\mu g/m^3$ and an annual arithmetic mean of 80 $\mu g/m^3$. Modeling results from the option with the higher SO_2 emission limits, combined with background concentrations, show a 3-hour concentration of 642.0 $\mu g/m^3$ (49.4 percent of NAAQS), a 24-hour concentration of 211.4 $\mu g/m^3$ (57.9 percent of NAAQS) and an annual concentration of 24.1 $\mu g/m^3$ (30.1 percent of NAAQS). Therefore, the modeling results for both options show that the NAAQS for SO_2 will be attained at the required 75 percent level.

D. What Is the Background for This Rulemaking?

On April 26, 1984 we notified the Governor of Wisconsin that the Wisconsin SO_2 SIP was inadequate to ensure the protection of the primary and secondary SO_2 NAAQS. The State responded to the notice of SIP deficiency with a Statewide SO_2 emission limitations rule (NR 417.07). On January 2, 1992 at 57 FR 25, we proposed to approve the majority of Wisconsin's Statewide SO_2 rules. A final approval of the majority of NR 417.07 was published on May 21, 1993 at 58 FR 29538 [we took no action on NR 417.07(2)(e) and NR 417.07(2)(f)].

As allowed under NR 417.07(5), Murphy Oil initially submitted a request for an alternate SO_2 emission limit in 1985 and proposed the first alternate SO_2 emission limitations in 1986. The WDNR concluded in an August 1988 memorandum that Murphy Oil's request for an alternate SO_2 emission limit was approvable. However, the State did not proceed at that time to propose an operating permit incorporating the alternate emission limit or to request public input on the proposed alternate emission limit, as required by the State rule.

EPA Action

In this rulemaking action, EPA approves the SO_2 emission limits in Wisconsin Air Pollution Control Operation Permit No. 95–SDD–120–OP, issued by the WDNR to Murphy Oil USA on February 17, 1999, and the modeled attainment demonstration using the alternate SO_2 limits for Murphy Oil in Superior (Douglas County), Wisconsin. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective October 15, 1999 without further notice unless relevant adverse comments are received by September 15, 1999. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 15, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments and does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that this action will not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2570 is amended by adding paragraph (c)(99) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(99) On February 26, 1999, the State of Wisconsin submitted a site-specific revision to the sulfur dioxide (SO_2) SIP for Murphy Oil USA located in Superior (Douglas County), Wisconsin. This SIP revision was submitted in response to a January 1, 1985, request for an alternate SO_2 emission limitation by Murphy Oil, in accordance with the procedures of Wisconsin State Rule NR 417.07(5) for obtaining alternate emission limits, as was approved by EPA in paragraph (c)(63) of this section.

(i) Incorporation by reference.

(A) AIR POLLUTION CONTROL OPERATION PERMIT NO. 95–DD–120–P, issued by the Wisconsin Department of Natural Resources (WDNR) to Murphy Oil USA on February 17, 1999.

(ii) Additional material.

(A) Analysis and Preliminary Determination for the Proposed Operation Permit for the Operation of Process Heaters and Processes Emitting Sulfur Dioxide for Murphy Oil, performed by the WDNR on September 18, 1998. This document contains a source description, analysis of the alternate emission limitation request, and an air quality review, which includes the results of an air quality modeling analysis demonstrating modeled attainment of the SO_2 NAAQS using the alternate emission limit for Murphy Oil.

[FR Doc. 99–21000 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH039–7166a; A–1–FRL–6416–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP).

DATES: This direct final rule takes effect on October 15, 1999 without further notice, unless EPA receives adverse or critical comments by September 15, 1999. If EPA does receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may mail comments to Susan Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region 1 (CAA), One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to cairns.matthew@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns at 617–918–1667 or cairns.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking today?
What is General Conformity?
Where does General Conformity apply?
Who must follow General Conformity?
How does General Conformity differ from Transportation Conformity?
What did New Hampshire submit to EPA for approval?
Why did New Hampshire have to develop its own General Conformity Rule?
Why must New Hampshire's Rule be federally enforceable?
How does New Hampshire's General Conformity Rule meet the requirements of a federally enforceable General Conformity Rule?
Does New Hampshire's General Conformity Rule differ from the Federal General Conformity rule?
How does General Conformity affect air quality in New Hampshire?
Where can I get copies of the New Hampshire General Conformity Rule?
What is the process for EPA's approval of these SIP revisions?

What Action Is EPA Taking Today?

EPA is approving New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP). This action makes New Hampshire's General Conformity Rule federally enforceable.

What is General Conformity?

General Conformity is a safeguard that no action by the Federal government interferes with a SIP's protection of the National Ambient Air Quality Standards (NAAQS). Under General Conformity, any action by the Federal government cannot:

• Cause or contribute to any new violation of any standard in any area;
• Interfere with provisions in the applicable SIP for maintenance of any standard;
• Increase the frequency or severity of any existing violation of any standard in any area; or
• Delay timely attainment of any standard of any required interim emission reductions or other milestones in any area.

General Conformity is a requirement of section 176(c) of the Clean Air Act Amendments of 1990 (CAA).

Where Does General Conformity Apply?

General Conformity applies in all nonattainment areas and maintenance areas for all the criteria pollutants under the CAA: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulate matter (PM), and sulfur dioxide (SO_2). It applies to Federal actions which produce reasonably foreseeable direct and indirect emissions of criteria pollutants or their precursors.

Who Must Follow General Conformity?

All Federal government agencies must follow General Conformity rules. The General Conformity rule establishes thresholds for triggering a conformity analysis. These rules and the requirements for a conformity analysis appear in detail in 40 CFR 51.851 and 93.151.

How Does General Conformity Differ From Transportation Conformity?

Transportation Conformity applies to transportation plans, programs, and projects funded or approved by the Federal Highway Administration or the Federal Transit Administration or recipients of fund from those agencies. General Conformity applies to all other Federal actions. When both Transportation Conformity and General Conformity apply to an action, if a transportation plan, program, or project meets the requirements of the Transportation Conformity rules in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, it is considered to meet the requirements of General Conformity.

What Did New Hampshire Submit to EPA for Approval?

New Hampshire submitted its General Conformity Rule, titled ''Chapter Env-A 1500—Conformity, Part Env-A 1502—Conformity of General Federal Actions,'' to EPA on July 10, 1996 as a revision to its SIP. The SIP revision for this rule incorporates by reference appropriate sections of 40 CFR part 51, subpart W and thereby establishes General Conformity criteria and procedures in the New Hampshire SIP.

Why Did New Hampshire Have to Develop Its Own General Conformity Rule?

The CAA requires each State to develop rules to implement the General Conformity rule. (See 40 CFR 51.851 and 93.151.) EPA believes that the Federal government does not have the primary responsibility for achieving clean air goals; Congress assigned that responsibility to State and local agencies. Therefore, each State must submit a revised SIP that includes General Conformity criteria and procedures that are consistent with the General Conformity rule. These criteria require that State Rules must be at least as stringent as the requirements specified in EPA's General Conformity rule. Furthermore, that they can only be more stringent if they apply equally to Federal and non-federal entities.

Why Must New Hampshire's Rule Be Federally Enforceable?

New Hampshire's General Conformity SIP revision enables the State of New Hampshire to implement and enforce the Federal General Conformity rules in New Hampshire's nonattainment and maintenance areas at the State and local level. By approving New Hampshire's Rule into the SIP, EPA also gains the authority to enforce the Federal General Conformity rules and New Hampshire's General Conformity Rule at the Federal level.

How Does New Hampshire's General Conformity Rule Meet the Requirements of a Federally Enforceable General Conformity Rule?

Section 110 of the CAA requires each State to adopt and submit to EPA a plan providing for the implementation, maintenance, and enforcement of air quality standards and control programs.

The New Hampshire Office of Legislative Services has determined that this SIP revision will be enforceable under the Laws of New Hampshire, RSA 125-C:4 Rulemaking Authority; Subpoena Power. This law states in part, ''The director shall adopt rules, subject to the written approval of the commissioner, under RSA 541–A, relative to:

(a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution, and

(b) Primary and secondary ambient air quality standards.''

Does New Hampshire's General Conformity Rule Differ From the Federal General Conformity Rule?

New Hampshire has incorporated the Federal General Conformity rule by reference, so New Hampshire's rule is no more stringent that the Federal rule and does not impose any additional controls on non-federal entities.

How Does General Conformity Affect Air Quality in New Hampshire?

If New Hampshire did not take steps to avoid pollution, air quality in New Hampshire would be degraded. The principle behind General Conformity is that the agency that sponsors or supports an activity is in the best position to limit the adverse air quality impacts of that activity. General Conformity is designed to hold those with the responsibility for a project accountable for the emissions that result from that project. The ultimate goal is to prevent actions that the Federal government supports from undermining State efforts to achieve and maintain clean air in a cost-effective manner.

Where Can I Get Copies of the New Hampshire General Conformity Rule?

As stated in the **ADDRESSES** section above, you may review copies of the New Hampshire General Conformity Rule by appointment during normal business hours at the Office Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire. You may also view a copy of the New Hampshire General Conformity Rule via the Internet at http://www.state.nh.us/des/ard/enva1502.pdf.

What Is the Process for EPA's Approval of These SIP Revisions?

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision should we receive relevant adverse comments. This action will be effective October 15, 1999 without further notice unless we receive relevant adverse comments by September 15, 1999.

If EPA does receive adverse comments, we will withdraw the direct final rule and publish a notice that the rule will not take effect. We will then respond to all public comments received in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. If you are interested in commenting on this action, you should do so at this time. If no such comments are received, you should know that this rule will be effective on October 15, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(63) Revisions to the State Implementation Plan Submitted by the New Hampshire Department of Environmental Services on July 10, 1996.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Department of Environmental Services dated July 10, 1996 submitting a revision to the New Hampshire State Implementation Plan.

(B) Part Env-A 1502 of Chapter Env-A 1500 of the New Hampshire Code of Administrative Rules titled ''Conformity of General Federal Actions,'' adopted in the State of New Hampshire on April 25, 1996.

For the State of New Hampshire

3. In § 52.1525, Table 52.1525 is amended by adding at the end of the table a new state citation for Conformity of General Federal Actions to read as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.s

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
Conformity of General Federal Actions.	CH Env-A 1500, Part Env-A 1502.	April 19, 1996.	August 16, 1999.	[Insert *FR* citation from published date].	c(63)	None.

[FR Doc. 99–21002 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–6421–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: This action makes typographical corrections to the final regulations (FRL–6340–6), which were published in the **Federal Register** of Thursday May 13, 1999, (FR Doc. 99–12001). The regulations related to North Dakota's Hospital/Medical/Infectious Waste Incinerator (HMIWI) 111(d) state plan.

DATES: This correcting amendment is effective on August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Region 8, Office of Air and Radiation, at (303) 312–6526.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections documented the approved Clean Air Act section 111(d) Plan submitted by the North Dakota Department of Health on October 6, 1998, to implement and enforce the Emissions Guidelines (EG) for Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI).

On May 13, 1999, EPA published the direct final approval of North Dakota's section 111(d) State Plan for the control of Hospital/Medical/Infectious Waste Incinerator emissions. Four typographical errors occurred in which the word hazardous was substituted for the word hospital.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 F.R. 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 F.R. 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it does not include any information collection requirements. This rule is not subject to the requirements of the National Technology Transfer and Advancement Act (NTTAA) because it does not include provisions for technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the US Senate, the US House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule correction will be effective on August 16, 1999.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 5, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII

Accordingly, 40 CFR part 62 is corrected by making the following correcting amendments:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart JJ—North Dakota

2. Revise the undesignated center heading and § 62.8610, 62.8611, and 62.8612 to subpart JJ to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.8610 Identification of Plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation in section 33–15–12–02 of the North Dakota Administrative Code submitted by the State on October 6, 1998.

§ 62.8611 Identification of Sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.8612 Effective Date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is July 12, 1999.

[FR Doc. 99–21166 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7719]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer availabile in special flood hazard areas
Region I				
Connecticut: Vernon, town of, Tolland County.	090131	January 26, 1973, Emerg.; December 4, 1979, Reg.; August 9, 1999, Susp.	August 9, 1999	August 9, 1999.
Massachusetts: Bourne, town of, Barnstable County.	255210	April 30, 1971, Emerg.; June 29, 1973, Reg.; August 9, 1999, Susp.	......do	Do.
Region III				
Pennsylvania: Upper Merion, township of, Montgomery County.	420957	December 17, 1973, Emerg.; November 16, 1977, Reg.; August 9, 1999, Susp.	......do	Do.
Region IV				
North Carolina: Wilkesboro, town of, Wilkes County.	370259	April 15, 1974, Emerg.; June 1, 1987, Reg.; August 9, 1999, Susp.	......do	Do.
Region X				
Washington: Brewster, city of, Okanogan County.	530275	February 14, 1975, Emerg.; September 1, 1977, Reg.; August 9, 1999, Susp.	......do	Do.
Region I				
New Hampshire: Concord, city of, Merrimack County.	330110	July 17, 1974, Emerg.; March 4, 1980, Reg.; August 23, 1999, Susp.	August 23, 1999	August 23, 1999.
Region II				
New Jersey: Absecon, city of, Atlantic County.	340001	December 23, 1971, Emerg.; March 5, 1976, Reg.; August 23, 1999, Susp.	......do	Do.
New York: Buffalo, city of, Erie County	360230	January 16, 1974, Emerg.; November 18, 1981, Reg.; August 23, 1999, Susp.	......do	Do.
Region III				
Pennsylvania:				
Tunkhannock, borough of, Wyoming County.	420917	April 18, 1973, Emerg.; December 18, 1979, Reg.; August 23, 1999 Susp.	......do	Do.
Tunkhannock, township of, Wyoming County.	422206	June 9, 1975, Emerg.; July 15, 1988, Reg.; August 23, 1999, Susp.	......do	Do.
Region IV				
South Carolina:				
Atlantic Beach, town of, Horry County ...	450222	October 28, 1976, Emerg.; May 15, 1978, Reg.; August 23, 1999, Susp.	......do	Do.
Aynor, town of, Horry County	450105	April 3, 1975, Emerg.; January 26, 1983, Reg.; August 23, 1999, Susp.	......do	Do.
Briarcliffe Acres, town of, Horry County	450232	November 25, 1977, Emerg.; June 15, 1979, Reg.; August 23, 1999, Susp.	......do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer availabile in special flood hazard areas
Conway, city of, Horry County	450106	November 7, 1974, Emerg.; September 28, 1979, Reg.; August 23, 1999, Susp.	......do	Do.
Horry County, unincorporated areas	450104	December 8, 1980, Emerg.; February 15, 1984, Reg; August 23, 1999, Susp.	......do	Do.
Loris, city of, Horry County	450108	August 6, 1975, Emerg.; September 1, 1986, Reg.; August 23, 1999, Susp.	......do	Do.
Myrtle Beach, city of, Horry County	450109	October 15, 1971, Emerg.; July 5, 1977, Reg.; August 23, 1999, Susp.	......do	Do.
North Myrtle Beach, city of, Horry County.	450110	August 23, 1974, Emerg.; October 14, 1977, Reg.; August 23, 1999, Susp.	......do	Do.
Surfside Beach, town of, Horry County	450111	September 10, 1971, Emerg.; December 17, 1976, Reg.; August 23, 1999, Susp.	......do	Do.
Sumter County, unincorporated areas	450182	September 17, 1979, Emerg.; January 5, 1989, Reg.; August 23, 1999, Susp.	......do	Do.
Region VI				
Arkansas:				
Crawford County, unincorporated areas	050428	June 29, 1990, Emerg.; August 5, 1991, Reg.; August 23, 1999, Susp.	......do	Do.
Crittenden County, unincorporated areas	050429	May 18, 1983, Emerg.; November 1, 1985, Reg.; August 23, 1999, Susp.	......do	Do.
Earle, city of, Crittenden County	050054	June 20, 1974, Emerg.; January 3, 1986, Reg.; August 23, 1999, Susp.	......do	Do.
Van Buren, city of, Crawford County	050053	January 16, 1974, Emerg.; November 16, 1977, Reg.; August 23, 1999, Susp.	......do	Do.
Region VI				
New Mexico:				
Clovis, city of, Curry County	350010	May 1, 1974, Emerg.; February 4, 1981, Reg.; August 23, 1999, Susp.	.....do	Do.
Region VIII				
Colorado:				
Calhan, town of, El Paso County	080192	March 12, 1976, Emerg.; March 18, 1986, Reg.; August 23, 1999, Susp.	......do	Do.
El Paso County, unincorporated areas	080059	March 9, 1973, Emerg.; December 18, 1986, Reg.; August 23, 1999, Susp.	......do	Do.
Region IX				
California: East Palo Alto, city of, San Mateo County.	060708	March 19, 1984, Emerg.; September 19, 1984, Reg.; August 23, 1999, Susp.	......do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: August 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–21142 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 96–149 and 96–61; FCC 99–103]

Regulatory Treatment of LEC Provision of Interexchange Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to allow independent local exchange carriers (LECs) that provide in-region, long distance services solely on a resale basis to do so through a separate corporate division rather than a separate legal entity.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Andrea Kearney, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order On Reconsideration adopted May 18, 1999, and released June 30, 1999 (FCC 99–103). The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 425 12th Street, SW, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Order/fcc99–103.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Second Order on Reconsideration

1. In this second order on reconsideration, we modify our conclusion in the *LEC Classification Order,* 62 FR 35974 (July 3, 1997) and allow independent LECs that provide in-region, long distance services solely on a resale basis to do so through a separate corporate division rather than a separate legal entity. The record indicates that this group includes most of the small and mid-sized LECs that currently provide in-region, long distance services. We also clarify the meaning of the term ''interexchange'' to avoid any possibility of unnecessary application of the Commission's separate affiliate requirements. In addition, we affirm our decision relaxing regulation of the BOCs' section 272 interLATA affiliates, i.e., by classifying these affiliates as non-

dominant for in-region, long distance services. We also address several other miscellaneous issues raised in the reconsideration petitions. Consistent with the *LEC Classification Partial Stay Order*, 63 FR 16696 (April 6, 1998) and the relief we grant in this order on reconsideration, any independent LEC that was providing long distance services on an integrated basis through the use or control of its own facilities must form a separate affiliate to provide such services within 60 days of the release of this order on reconsideration. Finally, we act on the Leaco Rural Telephone Cooperative, Inc. (Leaco) Petition for Waiver of the *LEC Classification Order* requirements.

V. Supplemental Final Regulatory Flexibility Analysis

2. As required by the Regulatory Flexibility Act (RFA), the Commission issued a Final Regulatory Flexibility Analysis (FRFA) in the *LEC Classification Order*, in which it certified that the rules adopted in that order would not have a significant impact on a substantial number of small entities. None of the petitions for reconsideration filed in this proceeding specifically addresses, or seeks reconsideration of, that FRFA. This present Supplemental FRFA addresses the potential effect on small entities of the rules we adopt in this order. This Supplemental FRFA incorporates and adds to our FRFA in the *LEC Classification Order*.

3. *Need for and Objectives of this Report and Order and the Regulations Adopted Herein*. The need for and objectives of the rules adopted in this order on reconsideration are the same as those discussed in the *LEC Classification Order's* FRFA. In general, the regulations adopted in the *LEC Classification Order* are intended to promote increased competition in the interexchange market. In this order on reconsideration, we clarify the *LEC Classification Order* and grant or deny petitions filed for reconsideration in order to further the same needs and objectives.

4. *Description and Estimates of the Number of Small Entities Affected by this Report and Order*. In this FRFA, we consider the impact of this order on two categories of entities, ''small incumbent LECs'' and ''small non-incumbent LECs.'' Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass ''small incumbent LECs.'' We use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.'' We include ''small non-incumbent LECs'' in our analysis, even though we believe that we are not required to do so.

5. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.

6. *Incumbent LECs*. SBA has not developed a definition of small incumbent LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,376 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,376 small incumbent LECs that may be affected by the decisions and regulations adopted in this order on reconsideration.

7. *Non-Incumbent LECs*. SBA has not developed a definition of small non-incumbent LECs. For purposes of this order, we define the category of ''small non-incumbent LECs'' to include small entities providing local exchange services that do not fall within the statutory definition in section 251(h), including potential LECs, LECs which have entered the market since the 1996 Act was passed, and LECs that were not members of the exchange carrier association pursuant to § 69.601(b) of the Commission's regulations. We believe it is impracticable to estimate the number of small entities in this category. We believe it is impossible to estimate the number of entities which may enter the local exchange market in the near future. Nonetheless, we will estimate the number of small entities in a subgroup of the category of ''small non-incumbent LECs.'' According to our most recent data, 119 companies identify themselves in the category ''Competitive Access Providers (CAPs) and Competitive LECs (CLECs).'' A CLEC is a provider of local exchange services which does not fall within the definition of ''incumbent LEC'' in section 251(h). Although it seems certain that some of the carriers in this category are CAPs, are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of non-incumbent LECs that would qualify as small business concerns under SBA's definition.

8. *Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements*. In this order on reconsideration, we conclude that independent LECs that are in-region, long distance resellers are permitted to provide such services through a separate division rather than a separate legal entity, subject to the *Fifth Report and Order* requirements, as modified by the *LEC Classification Order*. No party to this proceeding suggests that permitting independent LECs to provide long distance resale through a separate division would affect small entities or small incumbent LECs. We determine that compliance with the separate division requirement, rather than a separate legal entity requirement, may require small incumbent LECs to use accounting, economic, technical, legal, and clerical skills.

9. *Steps Taken To Minimize Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered*. We believe that the modification of the separate legal entity requirement will facilitate entry of independent LECs into the long distance market. We believe that resale is an essential facilitator of competition in the long distance industry because it allows independent LECs, some of which may be small entities, and other providers to enter the market immediately, and add their own facilities when it becomes efficient to do so. The modification of the separate legal entity requirement for independent LEC long distance resellers seems likely to benefit independent LECs, some of which may be small entities, by helping to reduce the cost of entry and of providing service. We reject alternatives to exempt all independent

LECs, or small and rural independent LECs, from the separate legal entity requirement, for the reasons stated in Section III of this order on reconsideration.

10. *Report to Congress*. The Commission shall send a copy of this FRFA, along with this order on reconsideration, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this analysis will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

VI. Ordering Clauses

11. Accordingly, *It is Ordered* that pursuant to sections 1, 2, 4, 201, 202, 220, 251, 271, 272 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 152, 154, 201, 202, 220, 251, 271, 272, and 303(r), the ORDER ON RECONSIDERATION is hereby *Adopted*, and the requirements contained herein shall be effective 30 days after publication of a summary thereof in the **Federal Register**. The amendment to the Uniform System of Accounts for Telecommunications Companies, part 32 of the Commission's rules, shall be effective six months after publication in the **Federal Register**, although affected parties may elect to implement these changes upon adoption.

12. *It is further ordered* that part 64, subpart T of the Commission's rules, is AMENDED as set forth in the rule changes hereto.

13. *It is further ordered* that the petitions for reconsideration are *granted* in part, as described herein, and otherwise are *denied*.

14. *It is further ordered* that the Leaco Rural Telephone Cooperative, Inc. Petition for Waiver is *rendered moot* in part, as described herein, and the remainder is *denied*.

15. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this order on reconsideration, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

LaVera F. Marshall,

Chief, Agenda Branch.

Rule Changes

For the reasons discussed in the preamble, Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS MATERIALS

1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

2. Section 64.1902 is revised to read as follows:

§ 64.1902 Terms and definitions.

Terms used in this part have the following meanings:

Books of Account. Books of account refer to the financial accounting system a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account.

Incumbent Independent Local Exchange Carrier (Incumbent Independent LEC). The term incumbent independent local exchange carrier means, with respect to an area, the independent local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this title; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section. The Commission may also, by rule, treat an independent local exchange carrier as an incumbent independent local exchange carrier pursuant to section 251(h)(2) of the Communications Act of 1934, as amended.

Independent Local Exchange Carrier (Independent LEC). Independent local exchange carriers are local exchange carriers, including GTE, other than the BOCs.

Independent Local Exchange Carrier Affiliate (Independent LEC Affiliate). An independent local exchange carrier affiliate is a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an independent local exchange carrier.

In-Region Service. In-region service means telecommunications service originating in an independent local exchange carrier's local service areas or 800 service, private line service, or their equivalents that:

(1) Terminate in the independent LEC's local exchange areas; and

(2) Allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

Local Exchange Carrier. The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

3. Section 64.1903 is revised to read as follows:

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) Except as provided in paragraph (c) of this section, an incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated exchange companies. Nothing in this section requires the affiliate to maintain separate books of account that comply with Part 32 of this title;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated exchange companies. Nothing in this section prohibits an affiliate from sharing personnel or other resources or assets with an affiliated exchange company; and

(3) The affiliate shall acquire any services from its affiliated exchange companies for which the affiliated exchange companies are required to file a tariff at tariffed rates, terms, and conditions. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated exchange companies, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) Except as provided in paragraph (b) (1) of this section, the affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated exchange companies. The affiliate may be staffed by personnel of its affiliated exchange companies, housed in existing offices of its affiliated exchange companies, and use its affiliated exchange companies' marketing and other services, subject to paragraph (a)(3) of this section.

(1) For an incumbent independent LEC that provides in-region, interstate domestic interexchange services or in-region international interexchange services using no interexchange switching or transmission facilities or capability of the LEC's own (i.e., ''independent LEC reseller,'') the affiliate required in paragraph (a) of this section may be a separate corporate division of such incumbent independent LEC. All other provisions of this Subpart applicable to an independent LEC affiliate shall continue to apply, as applicable, to such separate corporate division.

(2) [Reserved]

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than August 30, 1999.

[FR Doc. 99–20887 Filed 8–13–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. RSPA–98–4185 (HM–215C)]

RIN 2137–AD15

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and response to two petitions for reconsideration.

SUMMARY: On March 5, 1999, RSPA published a final rule under Docket HM–215C that amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule makes certain corrections to the March 5 final rule and responds to two petitions for reconsideration.

DATES: *Effective Date:* October 1, 1999.

Delayed Compliance Date: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0656 or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, US Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 5, 1999, RSPA published a final rule under Docket HM–215C (64 FR 10742) to maintain alignment with recent changes to corresponding provisions in international standards. This final rule corrects various errors and denies two petitions for reconsideration to the March 5, 1999 final rule. A document correcting printing errors appears elsewhere in today's edition of the **Federal Register**.

II. Section-by-Section Review

Section 172.101

The Hazardous Materials Advisory Council (HMAC) petitioned RSPA to replace the plus sign (''+'') with a different symbol for materials classified on the basis of human experience. (The plus sign fixes the proper shipping name, hazard class and packing group for a hazardous material entry in the Hazardous Materials Table, regardless of the actual hazard characteristics of the material.)

HMAC stated:

> To distinguish between materials that are classified on the basis of human experience and those that have been assigned a particular classification and/or packing group for other reasons, HMAC believes a different symbol, perhaps the pound (#) sign, would be better suited for this purpose. There are important differences in the ability of a shipper to reclassify dilute mixtures or solutions of these substances. For example, as pointed out in the preamble, a mixture or solution containing Epichlorohydrin, a material classified by human experience, could have a different PSN if the appropriate tests indicate it does not meet the corresponding hazard class. However, for materials assigned the ''+'' symbol for other reasons, § 172.101(b)(1) requires the authorization of the Associate Administrator for Hazardous Materials Safety to change the PSN and hazard class.

RSPA disagrees with the need to distinguish between materials that are classed on the basis of human experience and those that have been assigned a particular classification or packing group. First, any material preceded by a plus sign can be classed differently and assigned a different proper shipping name when in a solution or mixture which justifies that different classification. Second, any material preceded by a plus sign can be authorized by the Associate Administrator to be reclassed and assigned a different proper shipping name. Therefore, there is no apparent benefit for distinguishing between those ''plus-marked'' materials that are classed on the basis of human experience and those that are classed for other reasons, and the petition for reconsideration is denied.

The Hazardous Materials Table (HMT).

For the entries ''Aviation regulated liquid, n.o.s.'' and ''Aviation regulated solid, n.o.s.,'' the ''A'' was mistakenly omitted in the NPRM and the final rule and is reinstated in this document.

The entries ''Compounds, tree killing, liquid *or* Compounds, weed killing, liquid,'' NA1760 and NA1993 were amended by adding a ''G'' in Column (1) of the HMT to identify the entries as requiring a technical name in parentheses and in association with the basic description. However, the entry ''Compounds, tree killing, liquid *or* Compounds, weed killing, liquid,'' NA2810 was mistakenly omitted in the NPRM and the final rule. RSPA is reinserting that entry and adding the letter ''G'' in this final rule.

The entries ''Hydrocarbon gas mixture, compressed, n.o.s.'' and ''Hydrocarbon gas mixture, liquefied, n.o.s.'' are corrected by removing the letter ''G'' from Column (1). These two entries were listed correctly in the NPRM (63 FR 44312), as not requiring a technical name; however, in the final rule the letter ''G'' was mistakenly added.

Section 172.101 Appendix B to § 172.101—List of Marine Pollutants

For the entry ''*normal*-heptaldehyde,'' RSPA proposed to remove the severe marine pollutant designation (''PP''). Due to a typographical error, this entry was misspelled and printed twice, one with the ''PP'' designation and one without. This final rule removes the entries and replaces them with ''n-Heptaldehyde.''

Section 172.203

RSPA is removing paragraphs (k)(1) and (m)(2), which require n.o.s. descriptions to be supplemented with the technical name. The final rule adopted the letter ''G'' in Column (1) of the HMT to identify generic and n.o.s. entries that must be supplemented with a technical name. Therefore, these paragraphs are no longer necessary. In addition, RSPA is adding a sentence to paragraph (k) introductory text to alert readers about the letter ''G'' designator in Column (1) of the HMT. With the removal of paragraph (k)(1), paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively. With the removal of paragraph (m)(2), paragraph (m)(3) is redesignated as paragraph (m)(2).

Section 172.504

Although the wording in the regulatory text is correct in the March 5, 1999 final rule, RSPA notes that the preamble discussion mistakenly included the words ''or adjacent to the POISON label.''

Section 173.28

Certain existing text, which was omitted in the final rule and resulted in the unintentional removal of an exception, is reinstated in this final rule. The exception provides that replacing a removable gasket or closure device on a UN 1H1 plastic drum with one of the same design and material providing equivalent performance does not constitute reconditioning.

Section 173.32c

Due to a typographical error in paragraph (j), the word ''not'' was inadvertently omitted from the first sentence concerning the filling restriction and is added in this document. The intent of this prohibition was clearly indicated in the preamble of the final rule.

Section 173.222

In introductory paragraph (c) and paragraph (c)(4), an incorrect limitation of this requirement to transportation by aircraft is removed. The requirement applies to all modes of transportation.

Section 178.603

RSPA received a petition for reconsideration from the Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) requesting an amendment to § 178.603(f)(5) concerning the drop test criteria. COSTHA expressed concern that the requirements for combination packagings are more stringent than those for drums, jerricans and bags. COSTHA's request is beyond the scope of this rulemaking and will be considered in a separate rulemaking.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items i, ii, iii and v above and, adopted as final, would preempt State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements is February 14, 2000. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the Indian tribal communities, the funding and consultation requirements of the Executive Order do not apply.

D. Regulatory Flexibility Act

This final rule corrects certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the tenth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 29 to the IMDG Code (Docket HM–215C, 64 FR 10742). (The ICAO Technical Instructions and the IMDG Code were updated in a final rule, published October 29, 1998 (Docket HM–215C; 63 FR 44312).) This final rule applies to offerors and carriers of hazardous materials and will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. The costs associated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, in Column (1), as amended at 64 FR 10753 effective October 1, 1999, the following changes are made:

a. In Column (1), for the entries ''Aviation regulated liquid, n.o.s.'' and ''Aviation regulated solid, n.o.s.'', the letter ''A'' is added in alphabetical order.

b. In Column (1), for the entry, ''Compounds, tree killing, liquid *or* Compounds, weed killing, liquid'' (NA2810), the letter ''G'' is added in alphabetical order.

c. For the entries ''Hydrocarbon gas mixture, compressed, n.o.s.'' and ''Hydrocarbon gas mixture, liquefied, n.o.s.'', the letter ''G'' is removed each place it appears.

3. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing two entries and adding one entry in alphabetical order to read as follows:

APPENDIX B TO § 172.101—LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[REMOVE:]	
PP	*normal*-Heptyl aldehyde.
	normal-heptaldehyde.
[ADD:]	
* * *	* *
	n-Heptaldehyde.
* * *	* *

4. In § 172.203, in paragraph (k) introductory text, a new sentence is added at the end to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) * * * Shipping descriptions for toxic materials that meet the criteria of Division 6.1, PG I or II (as specified in § 173.132(a) of this subchapter) or Division 2.3 (as specified in § 173.115(c) of this subchapter) and are identified by the letter ''G'' in Column (1) of the § 172.101 Table, must have the technical name of the toxic constituent entered in parentheses in association with the basic description.

* * * * *

§ 172.203 [Amended]

5. In addition, in § 172.203 as amended at 64 FR 10775 effective October 1, 1999, the following changes are made:

a. Paragraph (k)(1) is removed.

b. Paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively.

c. Paragraph (m)(2) is removed.

d. Paragraph (m)(3) is redesignated as paragraph (m)(2).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

7. In § 173.28, in paragraph (c)(2)(iii), as revised at 64 FR 10776 effective October 1, 1999, ''; and'' is removed at the end of the sentence and a period is added in their place and a new sentence is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(c) * * *

(2) * * *

(iii) * * * (For a UN 1H1 plastic drum, replacing a removable gasket or closure device with another of the same design and material that provides equivalent performance does not constitute reconditioning); and

* * * * *

§ 173.28 [Amended]

8. In addition, in § 173.28, in paragraph (c)(2) introductory text, as revised at 64 FR 10776 effective October 1, 1999, the wording ''or a UN 1H1 plastic drum'' is added immediately following the words ''other than a metal drum'.

§ 173.32c [Amended]

9. In § 173.32c, in paragraph (j), as revised at 64 FR 10777 effective October 1, 1999, in the first sentence, the wording ''may be loaded to'' is removed and the words ''may not be loaded to'' are added in its place.

§ 173.222 [Amended]

10. In § 173.222, as revised at 64 FR 10779 effective October 1, 1999, the following changes are made:

a. In paragraph (c) introductory text, the wording ''For transportation by aircraft, the'' is removed and ''The'' is added in its place.

b. In paragraph (c)(4), the wording ''and is offered for transportation by aircraft'' is removed.

Issued in Washington, DC, on August 9, 1999, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–21074 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990212047–9208–02; I.D. 111998C]

RIN 0648–AL28

International Fisheries Regulations; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations.

SUMMARY: NMFS issues final regulations to implement recommendations of the

IATTC to conserve and manage the tuna fisheries of the Eastern Tropical Pacific Ocean (ETP). This rule provides for an annual announcement of tuna harvest quotas, closure of the U.S. fishery in the IATTC's Convention Area or in the Yellowfin Regulatory Area (CYRA) when quotas have been reached, and implementation of other measures recommended by the IATTC to ensure conservation and management of fishery resources. The rule also prohibits U.S. citizens from utilizing vessels that service fish-aggregating devices (FADs) and prohibits the transshipment at sea by U.S. purse seine vessels of purse seine-caught tuna. This final rule is intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the Department of State.

DATES: Effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Svein Fougner or James Morgan, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and skipjack tuna and other species taken by tuna fishing vessels in the ETP. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries. Each year, the IATTC recommends appropriate harvest levels (quotas) and/or other measures to prevent overexploitation and promote maximum sustainable yield (MSY). Each member country of the IATTC is responsible for enforcing quotas and other measures with respect to its own fisheries. As required by the Tuna Conventions Act of 1950, the recommendations of the IATTC must be approved by the Secretary of State before implementation for U.S. fisheries.

NMFS published a proposed rule on February 25, 1999 (64 FR 9296), that provided background on the 1998 recommendations that were not implemented and other permanent measures that are implemented by this rule. That background is not repeated here.

Comments and Responses

Three organizations commented on the proposed rule. Although most of the comments cannot be addressed by Federal regulations, the comments are summarized below with NMFS responses.

Comment 1: The U.S. Government should insist on the formation of a compliance committee in the IATTC to ensure that all member countries abide by IATTC recommendations.

Response: The United States has supported establishing such a committee under the auspices of the IATTC and has proposed terms of reference for a compliance committee. At its annual meeting in June 1999, the IATTC agreed to establish a Compliance Committee based on the U.S. terms of reference.

Comment 2: Fishermen should be prohibited from fishing all gear types, not only purse seines, when such a prohibition is necessary to reduce the harvest of small fish.

Response: This rule does not impose an immediate prohibition of sets on floating objects. Although the IATTC resolution of October 1998 specifically recommended prohibiting purse seines from being set on floating objects after the bigeye quota is reached, the prohibitions in § 300.28(b) have been revised to authorize the Southwest Regional Administrator, NMFS (Regional Administrator) to prohibit any fishing gear, as specified in the notification to fishermen, if such a prohibition is necessary for the conservation of fishery resources or other species.

Comment 3: One commenter expressed concern about the need for a quota on bigeye tuna and the quality of the data used to establish it. Questions were raised about using data obtained from foreign longline vessels, which may not have observers; the ability of observers on any vessel to distinguish between small yellowfin and bigeye tuna, and the effects of El Nino on the resource.

Response: A 45,000–metric ton (mt) quota on bigeye tuna was recommended by the IATTC and adopted by the member countries in 1998. The questions raised by the commenter, however, are legitimate and have a bearing on future decisions that the IATTC may make. Other nations also have questioned the quality of the data used to assess bigeye stocks and the effects of harvesting small bigeye on floating object sets. The IATTC staff are aware of these questions and have research underway to answer some of them. U.S. scientists are also obtaining U.S. vessels' catch and effort data to determine the extent to which those data confirm the IATTC staff analyses.

Comment 4: The prohibition on fishing on floating objects as a way of reducing the harvest of small fish is too simplistic. It implies that the only goal is the maximum productivity of tuna without recognizing the impact on other species. It also discriminates against nations that depend on this fishing strategy as a way to reduce the take of dolphins.

Response: This rule does not prohibit fishing on floating objects (natural or man-made); rather, it authorizes the Regional Administrator to prohibit fishing on floating objects in the future. The 1998 quota on bigeye would have been implemented by prohibiting sets on floating objects if and when the quota was reached. The bigeye quota is enforced this way because floating objects sets are responsible for virtually all the catch of small bigeye tuna. In fact, some nations may have been reluctant to set the 1999 quota in part because they did not want their vessels to be restricted from using a strategy on which they had become dependent. The U.S. supported the 1998 quota reluctantly because U.S. vessels are largely dependent on floating object fishing. However, in a meeting in January 1999, NMFS insisted that any consideration of management measures directed at any single fishing strategy be based on a full analysis of impacts on the stocks, on other ecosystem components (e.g., dolphin and other non-fish species), and on the vessels engaged in the fishery. The U.S. Department of State also actively seeks input from U.S. vessel owners to ensure that U.S. positions consider fully the impacts of alternative measures on U.S. firms.

Comment 5: The 15–percent incidental catch for yellowfin tuna that the IATTC recommended for the closed season in 1998 would allow uncontrolled mortality in excess of the estimated MSY.

Response: The IATTC resolutions in 1998 regarding yellowfin tuna included recommendations that apply to fishing vessels after the quota is reached, such as allowing a vessel to retain a 15–percent incidental harvest by weight of yellowfin tuna while fishing for other species of tuna. The 15–percent incidental catch allocation for yellowfin tuna will not allow uncontrolled mortality in excess of MSY. The IATTC estimates the amount of yellowfin tuna that will be caught during a closure and includes those data in its decision about when to close the fishery. The closure date is chosen so that the total yellowfin harvest (including incidental catch) will not exceed MSY. This final rule authorizes the Regional Administrator to close the U.S. fishery for yellowfin tuna or other species of tuna at such time as the IATTC Director of Investigations advises that the quota will be reached.

Bigeye and FAD issues in 1999

In 1999, the IATTC recommended that action be taken to limit the catch of bigeye tuna to 40,000 mt by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. This would tend to reduce the harvest of small fish and increase the catch-per-recruit.

This final rule establishes a procedure for implementing future recommendations of the IATTC. In addition, this final rule implements the following two measures, which were recommended by the IATTC in 1998 and approved by the Department of State:

1. The use of tender vessels, which are vessels that do not engage in purse seining but tend FADS in support of tuna fishing operations, in the Convention Area is prohibited; and

2. The transshipment of tuna by purse seine vessels at sea in the Convention Area is prohibited.

NMFS will notify fishermen of any future resolutions adopted by the IATTC and approved by the Department of State.

Changes to the Proposed Rule

Changes to the proposed rule were made to the definition of Regional Administrator to allow a designee to act in his or her stead, and to the prohibitions section at § 300.28(b) to authorize the Regional Administrator to prohibit the use of any fishing gear around floating objects, if such a prohibition is necessary for the conservation of fishery resources or other species.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, High seas fishing, International agreements, Reporting and recordkeeping requirements.

Dated: August 10, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act) and the Atlantic Tunas Convention Act of 1975. The regulations provide a mechanism to carry out the recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States. They also carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. Section 300.21 is amended by removing the definition of ''Regional Director'' and adding definitions for ''Bigeye tuna'', ''Commission's Yellowfin Regulatory Area (CYRA)'', ''Convention Area'', ''Fish aggregating device (FAD)'', ''Fishing trip'', ''Floating object'', ''Incidental catch or incidental species'', ''Land or Landing'', ''Observer'', ''Regional Administrator'', ''Tender vessel'', ''Transship'', and ''Transshipment receiving vessel'' in alphabetical order to read as follows:

§ 300.21 Definitions.

*   *   *   *   *

Bigeye tuna means the species *Thunnus obesus.*

*   *   *   *   *

Commission's Yellowfin Regulatory Area (CYRA) means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

40° N. lat., 125° W. long.;
20° N. lat., 125° W. long.;
20° N. lat., 120° W. long.;
5° N. lat., 120° W. long.;
5° N. lat., 110° W. long.;
10° S. lat., 110° W. long.;
10° S. lat., 90° W. long.;
30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

Convention Area means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

Fish aggregating device (FAD) means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

Fishing trip means a period of time between landings when fishing is conducted.

*   *   *   *   *

Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Incidental catch or *incidental species* means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

*   *   *   *   *

Regional Administrator means the Administrator, Southwest Region, NMFS, or his designee.

*   *   *   *   *

Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

4. In § 300.28, the section heading is revised, paragraphs (a) through (c) are redesignated as (e) through (g), respectively, and new paragraphs (a) through (d) are added to read as follows:

§ 300.28 Prohibitions.

*   *   *   *   *

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator's notification of closure issued under § 300.29.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

* * * * *

5. Section 300.29 is added to Subpart C to read as follows:

§ 300.29 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations.* The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, the Regional Administrator will announce approved IATTC recommendations in the **Federal Register**.

(b) *Tuna quotas.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:

(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;

(ii) A prohibition on the further setting of specified gear types on floating objects by U.S. vessels in the Convention Area;

(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;

(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or

(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) The Regional Administrator will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or projection under paragraph (b)(2) of this section, the Regional Administrator will publish an announcement of the closure in the **Federal Register**.

(c) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(d) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

PART 300—[AMENDED]

6. In addition to the amendments set forth under the authority of 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*, in part 300, revise all references to ''Regional Director'' to read ''Regional Administrator''.

[FR Doc. 99–21196 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999J]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The directed fishery for northern rockfish in the Central Regulatory Area was closed under § 679.20(d)(iii) on July 19, 1999 (64 FR 39090, July 21, 1999), and reopened on August 6, 1999 (64 FR 43296, August 10, 1999).

On July 19, 1999 (64 FR 39090, July 21, 1999), in accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), determined that the 1999 TAC for northern rockfish would be reached. Therefore, the Regional Administrator established a directed fishing allowance of 3,650 mt, and set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21094 Filed 8–10–99; 4:49 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999I]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 1999 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(4)(ii)(B), the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the allocation of the 1999 sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA as 1,118 metric tons (mt).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21093 Filed 8–10–99; 4:49 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 157

Monday, August 16, 1999

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA22

Office of Nonproliferation and National Security; Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The DOE proposes to amend its regulations concerning the procedures used to render final determinations of eligibility for access to classified matter and/or special nuclear material. The purpose of the amendments is to ensure that DOE procedures in this regard conform to the access eligibility determination provisions in Part 5 of Executive Order 12968,''Access to Classified Information,'' signed by the President in August 1995.

DATES: Comments may be submitted by October 15, 1999.

ADDRESSES: Ten (10) copies of comments should be sent to: A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, NN–512, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

FOR FURTHER INFORMATION CONTACT: A. Barry Dalinsky at the address above or telephone 301–903–5010.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Summary of Proposed Changes
III. Section by Section Discussion of Changes
IV. Procedural Requirements
A. Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the National Environmental Policy Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12988
F. Review Under the Unfunded Mandates Reform Act of 1995
G. Review Under the Treasury and General Government Appropriations Act, 1999
V. Opportunity for Public Comment

I. Introduction and Background

The DOE has established procedures to resolve questions concerning the access authorization eligibility for individuals (including consultants and agents) who are applicants for employment or employed by: the DOE; DOE contractors and subcontractors at any tier; DOE access permittees; and other persons designated by the Secretary of Energy for access to DOE classified matter and/or special nuclear material. This access authorization is commonly referred to as a security clearance. These procedures are codified in Subpart A of Title 10, Code of Federal Regulations, Part 710 (hereafter referred to as 10 CFR Part 710) which would be amended if today's proposed rule were promulgated as a final rule.

When the DOE proposes to deny or revoke an access authorization under current procedures, the individual is afforded an opportunity to appear before a DOE Hearing Officer. The Hearing Officer considers favorable and unfavorable information presented during the hearing and prepares a report of findings, relative to the merit of the DOE allegations, and an opinion as to whether access authorization for the individual should be granted or denied, or reinstated or revoked. The Hearing Officer's findings and opinion may be appealed by either the individual or the DOE to the Director, Office of Hearings and Appeals. The administrative record, which includes the opinions rendered by the Hearing Officer and the Director, Office of Hearings and Appeals, is then forwarded to the Director, Office of Security Affairs, who carefully considers the record and makes a final determination as to whether access authorization for the individual will be either granted or denied, or reinstated or revoked. On August 2, 1995, the President signed Executive Order 12968, ''Access to Classified Information,'' which requires that an individual determined not to meet the standards for access authorization be provided an opportunity to appeal in writing a denial of access to a high level panel comprised of at least three members, two of whom shall be selected from outside the security field. As noted above, current DOE procedures allow for opinions to be rendered by the Hearing Officer and the Director, Office of Hearings and Appeals. However, the final determination in a case under review is rendered by the Director, Office of Security Affairs. In order to comply with the Executive Order requirement that an individual be afforded the opportunity to appeal to a high level panel, the DOE proposes to amend 10 CFR Part 710 to allow for: an initial decision concerning access authorization eligibility to be made by the local DOE Manager; a review decision to be made after completion of a hearing by a Hearing Officer; and a final decision to be made by a high level three member Appeal Panel (hereafter referred to as ''Appeal Panel'') at DOE Headquarters. This Appeal Panel, consistent with Executive Order 12968, would consist of one DOE security official and two other DOE officials outside the security field. The DOE proposes that its Appeal Panel be comprised of: the Director, Office of Security Affairs; an attorney from the Office of General Counsel; and a representative from the appropriate DOE Headquarters office. The notifications currently provided to the individual and the opportunity afforded the individual to participate in a hearing before a DOE Hearing Officer would not be affected by the amendments proposed today. The DOE also proposes several other amendments to 10 CFR Part 710 as described below.

II. Summary of Proposed Changes

As noted above, the proposed regulations will revise existing regulations to comply with Executive Order 12968. The proposed procedures continue to provide for a hearing before a Hearing Officer; however, the possibility of an appeal of the Hearing Officer's opinion to the Director, Office of Hearings and Appeals, is eliminated and the final determination currently rendered by the Director, Office of Security Affairs, is replaced by a final decision rendered by an Appeal Panel.

Under the proposed regulations, the initial decision is to be made by the local Manager to deny or revoke an individual's access authorization. The individual is advised of the initial decision and the reason(s) therefor and offered the opportunity to appear at a hearing before a DOE Hearing Officer. If the individual elects not to participate in a hearing, the initial decision by the Manager is considered final unless the individual requests a review and final decision by the Appeal Panel. If the individual elects to participate in a hearing, the Hearing Officer will conduct a hearing and render a written decision upon completion of the hearing to either grant or deny, or reinstate or revoke, access authorization for the individual. The individual is advised of the Hearing Officer's decision which, if unfavorable to the individual, is referred at the individual's request to the Appeal Panel for further review and a final decision as to the individual's access authorization eligibility. If the individual fails to request a referral to the Appeal Panel, the decision rendered by the Hearing Officer is final. If the Hearing Officer's decision is favorable to the individual, either the Manager or Director, Office of Safeguards and Security, may elect to refer the individual's case to the Appeal Panel for further review and a final decision. If DOE officials elect not to refer the individual's case to the Appeal Panel for further review, the Hearing Officer's decision in the case is final. If a case is referred to the Appeal Panel by either the individual or DOE officials, the Appeal Panel members will review the administrative record and any additional material submitted for consideration by the parties, and render a final written decision, decided by majority vote of the panel members, as to the individual's access authorization eligibility. The decision will be made a part of the administrative record.

Upon issuance of the final rule, there will be a provision specifying that cases in process, wherein the individual has been provided a notification letter by the DOE, will continue to be subject to the current regulations.

III. Section by Section Discussion of Changes

Section 710.1 Purpose

Paragraph (b) of this section would be changed by: replacing the reference to Executive Order 12356 with a reference to Executive Order 12958; adding a reference to Executive Order 12968, ''Access to Classified Information;'' and adding a reference to a new Appendix B to the subpart.

Section 710.4 Policy

No substantive changes would be made to paragraphs (a), (b), (d), (e), and (f) of this section. Paragraph (c) would be amended to allow the DOE to determine whether further processing should be continued or suspended for an access authorization applicant who is awaiting trial. The DOE would consider the seriousness of the crime with which the individual has been charged before deciding whether to continue or suspend further processing of the access authorization request. A decision to suspend further processing of the access authorization request could be appealed by the individual under the newly added paragraph (g) to this section which would also allow the individual to appeal an unfavorable decision made under paragraphs (d) and (e) of this section to the Director, Office of Safeguards and Security.

Section 710.5 Definitions

Minor changes would be made to the definitions for Local Director of Security, National Security Information, and Operations Office Manager or Manager to reflect updated organizational changes and an updated reference to the Executive Order. A definition for Classified Matter would be added to this section.

Section 710.7 Application of the Criteria

Changes would be made to paragraph (a) to clarify that: the decision process applies not only to the granting but also the continuation of access authorization; any doubt as to access authorization eligibility would be resolved in favor of the national security (as required in Executive Order 12968); and, absent any derogatory information, a favorable decision usually would be made as to the individual's access authorization eligibility.

Section 710.8 Criteria

Minor nomenclature changes would be made to paragraph (f); paragraph (g) would be expanded to include classified and sensitive information technology systems; the term ''other licensed physician'' would be deleted from paragraphs (h) and (j), and the term ''board-certified psychiatrist'' would be changed in those paragraphs to ''psychiatrist;'' the word ''Federal'' would be inserted before the word ''law'' in paragraph (k); and the term ''conflicting allegiances'' would be added to the second sentence in paragraph (l).

Section 710.9 Action on Derogatory Information

This section is reformatted to clarify DOE internal procedures. The proposed changes will not affect the application of the procedures to the individual.

Section 710.10 Suspension of Access Authorization

Paragraph (a) is rewritten for clarity. Paragraphs (e) and (f) would be added to this section to clarify DOE internal procedures. No substantive changes are made to paragraphs (b), (c), and (d) of this section.

Section 710.21 Notice to Individual

Paragraph (b)(2) is expanded to require the DOE to advise the individual of the specific reason(s) the conduct and/or circumstances have raised a doubt concerning his/her access authorization eligibility. The current section 710.22, Additional information, would be incorporated into this section as a new paragraph (c). Paragraph (c)(3) would be modified to include explaining the individual's rights under the Freedom of Information Act as well as the Privacy Act. The proposed changes will not affect the application of the procedures to the individual.

Section 710.22 Initial Decision Process

This section is retitled and will establish the process by which the Manager renders an initial decision concerning the individual's access authorization eligibility when the individual elects not to request a hearing before a DOE Hearing Officer or fails to respond to the DOE's Notification Letter. The individual will then be notified in writing of the Manager's initial decision and the reason(s) therefor, and, if the initial decision is unfavorable to the individual, the right to file a written request for a review of the matter by the Appeal Panel. In unfavorable initial decisions, if the individual fails to respond to the Manager's notification or fails to file a written request for review by the Appeal Panel, the initial decision of the Manager is final. This initial decision process is similar to current regulations and would implement the first decision level of the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.23 Extension of Times by the Manager

The words ''Operations Office'' are deleted from the section title.

Section 710.27 Hearing Officer's Decision

Currently titled ''Opinion of the Hearing Officer,'' this section is retitled and changed to allow the Hearing Officer to render a decision as to the individual's access authorization eligibility after completion of the hearing. Previously, the Hearing Officer rendered an opinion only as to the individual's access authorization eligibility. The procedures used by the Hearing Officer in reaching the findings of fact are not changed.

Section 710.28 Action on the Hearing Officer's Decision

This section is retitled to reflect that the Hearing Officer will issue a decision rather than an opinion. Procedures are established for the individual or DOE officials to request that the case be reviewed by the Appeal Panel. If no such request is made, the decision of the Hearing Officer in the case is final. The party requesting a review of the case by the Appeal Panel is responsible for notifying the other party of the filing and providing the other party with a copy of the statement filed with the Appeal Panel. The Hearing Officer's decision represents the second level in the three-tiered access eligibility decision process required by Executive Order 12968.

Section 710.29 Final Appeal Process

Sections 710.29 through 710.34 would be redesignated as sections 710.30 through 710.34. A new section 710.29, ''Final appeal process,'' is added to implement the third decision level of the three-tiered access eligibility decision process required by Executive Order 12968. Currently, the final decision as to the individual's access authorization eligibility is rendered by the Director, Office of Security Affairs, unless a final decision is rendered by the Manager under section 710.21(b)(8) or the Secretary of Energy under section 710.31. Under the proposed regulations, a final decision as to the individual's access authorization eligibility would be rendered by a three member Appeal Panel comprised of: the Director, Office of Security Affairs, serving as a permanent panel member and as the Appeal Panel Chairman; a DOE attorney designated by the General Counsel; and a DOE employee designated by the head of the appropriate DOE Headquarters element or, in special circumstances by the Director, Office of Security Affairs. Each panel member will be a United States citizen and hold a DOE Q access authorization. The Appeal Panel will convene in response to a request filed by the individual or a DOE official for further review of the individual's case; review the administrative record and any new material submitted by the individual or the DOE; and render a final decision in writing as to whether access authorization should be granted or denied, or reinstated or revoked for the individual. Appeals will be decided by a majority vote of the panel members. The individual will be informed in writing of the Appeal Panel's final decision. This section would be changed also to allow the Director, Office of Security Affairs, with the approval of the Secretary, to defer an Appeal Panel final decision if the individual is the subject of an unresolved inquiry or investigation of a matter that would affect the individual's DOE access authorization eligibility; and, in rare circumstances, to refer a case to the Secretary for a final decision if the Director is aware of information that can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer.

Section 710.30 New Evidence

Minor changes are made to this newly redesignated section to reflect the new decision structure in the process. The changes do not affect the application of the procedures to the individual.

Section 710.31 Action by the Secretary

Paragraphs (a), (b), and (c) of this newly designated section would be changed and a new paragraph (d) added to allow the Secretary to approve the deferral of an Appeal Panel final decision and to render a final decision in cases where information cannot be disclosed, for national security reasons, during the proceedings before a DOE Hearing Officer.

Section 710.32 Reconsideration of Access Eligibility

Paragraph (c) of this newly redesignated section has been clarified to reflect that only the individual can request reconsideration of his or her case.

Section 710.33 Terminations

This newly redesignated section is changed to allow final decisions to be made a part of the administrative record prior to the DOE being notified of the termination.

Section 710.34 Attorney Representation

No substantive changes are made to this newly redesignated section.

Section 710.35 Timeframes

No substantive changes are made to this newly redesignated section.

Section 710.36 Acting Officials

This section would be added to the current regulations to allow the authorities conferred in this subpart to be exercised by persons designated in writing as acting for, or in the temporary capacity of, the principal decision-makers.

Appendix B

This appendix is added to this subpart for reference purposes only. The Adjudicative Guidelines were developed by the Security Policy Board in March 1997 for distribution throughout the Executive Branch. The guidelines are not subject to public notice and comment rulemaking procedures.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. Such an analysis is not required, however, if the agency certifies that the rule would not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

DOE certifies that the amendments to 10 CFR Part 710 proposed today would not have a significant economic impact on a substantial number of small entities. This proposed rule, if promulgated as a final rule, would change the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material. The amendments, which are required to conform 10 CFR Part 710 to the requirements of Executive Order 12968, would affect only individual employees or applicants for employment. The rule does not directly regulate small entities.

C. Review Under the National Environmental Policy Act

DOE has concluded that the proposed rule, which would amend the Department's procedures for eligibility determinations for access to classified matter and/or special nuclear material, falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42

U.S.C. 4321 et seq.). Specifically, the proposed rule is categorically excluded from environmental review as the proposed rule is strictly procedural (Category Exclusion A6). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under the Paperwork Reduction Act

No new collection of information is proposed to be imposed by this rulemaking. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988 (61 FR 4729) instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 3 (a) and (b), include eliminating drafting errors and ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's proposed rule meets the requirements of sections 3 (a) and (b) of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 et seq., requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The rule amendments proposed today would not impose a federal mandate on state, local, or tribal governments or on the private sector. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Statement.

V. Opportunity for Public Comment

DOE believes that no substantial issue of fact or law exists with respect to the proposed amendments, and that the proposed amendments will not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the DOE does not intend to provide an opportunity for oral presentation of views or arguments regarding the proposed amendments. Nevertheless, the DOE will consider scheduling a public hearing for the oral presentation of views and arguments if members of the public requesting a hearing present a reasonable argument that a hearing is appropriate. The public is invited to submit written comments regarding the proposed amendments set forth in this notice to the address indicated in the ''addresses'' section of this preamble. The designation ''Amendment of Rules—10 CFR Part 710'' should be indicated on the outside of the envelope and ten (10) copies of comments should be submitted. All comments received by the DOE will be available for public inspection and copying in the DOE's Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, telephone number (202) 586–3142, between 9:00 a.m. and 4:00 p.m., Monday through Friday excluding holidays.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Governments contracts, Nuclear materials.

Issued in Washington, DC, on August 3, 1999.

Rose Gottemoeller,

Assistant Secretary for Nonproliferation and National Security.

For the reasons set forth in the preamble, Part 710 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 141, 68 Stat. 940, as amended (42 U.S.C. 2161); Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 12958, 3 CFR 1995, comp., p. 333; E.O. 12968, 3 CFR 1995, comp., p. 391.

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

2. Section 710.1 is amended by revising paragraph (b) to read as follows:

§ 710.1 Purpose.

* * * * *

(b) This subpart is published to implement: Executive Order 12968, 60 FR 40245 (August 7, 1995); Executive Order 12958, 60 FR 19825 (April 20, 1995); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended; and the 1997 Adjudicative Guidelines approved by the President and set forth in Appendix B to this subpart.

3. Section 710.4 is amended by revising paragraph (c) and adding paragraph (g) as follows:

§ 710.4 Policy.

* * * * *

(c) If the individual is currently awaiting hearing or trial, or has been convicted of a crime punishable by imprisonment of six (6) months or longer, or is awaiting or serving a form of preprosecution probation, suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, DOE may suspend processing an application for access authorization until such time as the hearing, trial, criminal prosecution, suspended sentencing, deferred sentencing, probation, or parole has been completed.

* * * * *

(g) If an individual believes that the provisions of paragraph (c), (d), or (e) of this section have been inappropriately applied, a written appeal may be filed with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date the individual was notified of the action. The Director, Office of Safeguards and Security, shall act on the written appeal as described in section 710.6(c).

4. Section 710.5 is amended by adding in alphabetical order a definition for the term ''Classified Matter'' and by revising the definitions for ''Local Director of Security,'' ''National Security Information,'' and ''Operations Office Manager or Manager'' as follows:

§ 710.5 Definitions.

* * * * *

Classified Matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

* * * * *

Local Director of Security means the Operations Office or Naval Reactors Office Security and Safeguards Division Director, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Idaho Operations Office, the Program Manager, Security and Resource Management Division; for the Pittsburgh Naval Reactors Office, the Director, Contracts and Securities Division; for the Savannah River Operations Office, the Director, Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an ''acting'' capacity.

* * * * *

National Security Information means any information that has been determined, pursuant to Executive Order 12958 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

* * * * *

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office (Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Oakland, Richland, or Savannah River), the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

* * * * *

5. Section 710.7 is amended by revising paragraph (a) to read as follows:

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security. Absent any derogatory information, a favorable determination usually will be made as to access authorization eligibility.

* * * * *

6. Section 710.8 is amended by adding the words ''(or National Security)'' between the words ''Sensitive'' and ''Positions'' in the first sentence of paragraph (f) and revising paragraphs (g), (h), (j), (k), and (l) to read as follows:

§ 710.8 Criteria.

* * * * *

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information; or violated or disregarded regulations, procedures, or guidelines pertaining to classified or sensitive information technology systems.

(h) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.

* * * * *

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

7. Section 710.9 is revised to read as follows:

§ 710.9 Action on derogatory information.

(a) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more items in the criteria, or of other reliable information or facts which are of security concern, although outside the scope of the stated categories, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility.

(b) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of an interview with the individual, or other appropriate actions, which may include a DOE-sponsored mental evaluation, and, on the basis of the results of such interview or actions, may authorize the granting of the individual's access authorization. If, in the opinion of the Local Director of Security, the question as to the individual's access authorization eligibility has not been favorably resolved, he shall submit the matter to the Manager with a recommendation that authority be obtained to process the individual's case under administrative review procedures.

(c) If the Manager agrees that unresolved derogatory information is present and that appropriate attempts to resolve such derogatory information have been unsuccessful, he shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of the security concerns and a duplicate Personnel Security File, to the Director, Office of Safeguards and Security. If the Manager believes that the derogatory information has been favorably resolved, he shall direct that access authorization be granted for the individual. The Manager may also direct the Local Director of Security to obtain additional information in the matter prior to deciding whether to grant the individual access authorization or to submit a request for authority to conduct an administrative review proceeding. A decision in the matter shall be rendered by the Manager within 10 calendar days of its receipt.

(d) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security, shall review the matter and shall authorize:

(1) The institution of administrative review proceedings set forth in sections §§ 710.20 through 710.32;

(2) The granting of access authorization; or

(3) Such other action as the Director deems appropriate.

(e) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an extension is granted by the Director, Office of Security Affairs.

8. Section 710.10 is amended by revising paragraph (a) and adding paragraphs (e) and (f) as follows:

§ 710.10 Suspension of access authorization.

(a) If information is received that raises a question concerning an individual's continued access authorization eligibility, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to section § 710.9(b). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual, the Local Director of Security shall submit the matter to the Manager with a recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures in this subpart.

* * * * *

(e) Upon receipt of the Manager's request for authority to conduct an administrative review proceeding, the Director, Office of Safeguards and Security shall review the matter and shall authorize:

(1) The institution of administrative review procedures set forth in §§ 710.20 through 710.32;

(2) The reinstatement of access authorization; or

(3) Such other action as the Director deems appropriate.

(f) The Director, Office of Safeguards and Security, shall authorize one of these options within 30 calendar days of the receipt of the Manager's request unless an exception is granted by the Director, Office of Security Affairs.

9. Section 710.21 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (c) to read as follows:

§ 710.21 Notice to the individual.

(a) Unless an extension is authorized by the Director, Office of Safeguards and Security, within 30 calendar days of receipt of authority to institute administrative review procedures, the Manager shall prepare and deliver to the individual a notification letter approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases. Where practicable, the letter shall be delivered to the individual in person.

(b) * * *

(1) * * *

(2) The information which creates a substantial doubt regarding the individual's access authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

* * * * *

(c) The notification letter referenced in paragraph (b) of this section shall also:

(1) Describe the individual's access authorization status until further notice;

(2) Advise the individual of the right to representation at the individual's own expense at each and every stage of the proceedings;

(3) Provide the name and telephone number of the designated DOE official to contact for any further information desired concerning the proceedings, including an explanation of the individual's rights under the Freedom of Information and Privacy Acts; and

(4) Include a copy of this subpart.

10. Section 710.22 is revised to read as follows:

§ 710.22 Initial decision process.

(a) The Manager shall make an initial decision as to the individual's access authorization eligibility based on the existing information in the case if:

(1) The individual fails to respond to the notification letter by filing a timely written request for a hearing before a Hearing Officer or fails to respond to the notification letter after requesting an extension of time to do so;

(2) The individual's response to the notification letter does not request a hearing before a Hearing Officer; or

(3) The Hearing Officer refers the individual's case to the Manager in accordance with § 710.25(e) or § 710.26(b).

(b) Unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager's initial decision as to the individual's access authorization eligibility shall be made within 15 calendar days of the date of receipt of the information requested in paragraph (a) of this section. The Manager shall either grant or deny, or reinstate or revoke, the individual's access authorization.

(c) A letter reflecting the Manager's initial decision in the individual's case shall be signed by the Manager and delivered to the individual within 15 calendar days of the date of the Manager's decision unless an extension of time is granted by the Director, Office of Safeguards and Security. If the Manager's initial decision is unfavorable to the individual, the individual shall be advised:

(1) Of the Manager's unfavorable decision and the reason(s) therefor;

(2) That within 30 calendar days from the date of receipt of the letter, he may file a written request for a review of the Manager's initial decision through the Director, Office of Safeguards and Security, DOE Headquarters, to the DOE Headquarters Appeal Panel (hereafter referred to as the ''Appeal Panel'');

(3) That the Director, Office of Safeguards and Security, may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a review of the case by the Appeal Panel; and

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, the Manager's initial decision in the case shall be final.

§ 710.23 [Amended]

11. Section 710.23 is amended by removing the words ''Operations Office'' from the section heading.

12. Section 710.27 is amended by revising the section heading, removing the words ''an initial opinion'' in the first sentence of paragraph (a) and inserting in their place the words ''a decision,'' by removing sections 710.27(e), 710.27(f), and 710.27(g) and by revising section 710.27(d) to read as follows:

§ 710.27 Hearing Officer's decision.

* * * * *

(d) The Hearing Officer's decision shall be based on the Hearing Officer's findings of fact. If, after considering all of the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Hearing Officer shall render a favorable decision; otherwise, the Hearing Officer shall render an unfavorable decision. Within 15 calendar days of the Hearing Officer's written decision, the Hearing Officer shall provide copies of the decision and the administrative record to the Manager and the Director, Office of Safeguards and Security.

13. Section 710.28 is revised to read as follows:

§ 710.28 Action on the Hearing Officer's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, Office of Safeguards and Security, the Manager shall:

(1) Notify the individual in writing of the Hearing Officer's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director, Office of Safeguards and Security, in paragraph (c) of this section if the decision is favorable to the individual; and,

(4) Provide the individual and/or counsel or representative, a copy of the Hearing Officer's decision and the administrative record.

(b) If the Hearing Officer's decision is unfavorable to the individual:

(1) The individual may file with the Director, Office of Safeguards and Security, a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director, Office of Safeguards and Security may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Hearing Officer's decision shall be considered final if the individual does not: file a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for further review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section; or, file a written request for a further review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Hearing Officer's decision is favorable to the individual, within 30 calendar days of the individual's receipt of the Manager's notice:

(1) The Manager or the Director, Office of Safeguards and Security, may file a written request for further review of the decision by the Appeal Panel along with the statement required by paragraph (e) of this section;

(2) The Director, Office of Security Affairs, may, at the written request of the Manager or Director, Office of Safeguards and Security, extend the time for filing a request for further review of the decision by the Appeal Panel; or

(3) The Manager, with the concurrence of the Director, Office of Safeguards and Security, shall grant or reinstate the individual's access authorization.

(d) A copy of any request for further review of the individual's case by the Appeal Panel filed by the Manager or the Director, Office of Safeguards and Security, shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the Appeal Panel shall include with the request a statement identifying the issues on which it wishes the Appeal Panel to focus. A copy of such statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

14. Sections 710.29 through 710.34 are redesignated as §§ 710.30 through 710.35 and a new Peace Corps § 710.29 is added to read as follows:

§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Director, Office of Security Affairs, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager, or the Director, Office of Safeguards and Security, in accordance with §§ 710.22, 710.28, and 710.32 of this subpart.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Director, Office of Security Affairs, shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chairman. The second member of on the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element who has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the third member will be designated by the Chairman. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or the counsel or representative, shall identify the relevant issues and may also submit any relevant material in support of the individual. The individual's written request and supportive material shall be made a part of the administrative record. The Director, Office of Safeguards and Security, shall provide staff support to the Appeal Panel as requested by the Director, Office of Security Affairs.

(d) Within 15 calendar days from the date of receipt of a request for a review of a case by the Appeal Panel, the Director, Office of Security Affairs, shall:

(1) Request the General Counsel to designate an attorney who shall serve as an Appeal Panel member;

(2) Either request the head of the cognizant DOE element to designate, or designate himself, an employee from outside the security field who shall serve as the third member of the Appeal Panel; and

(3) Arrange for the Appeal Panel members to convene to review the administrative record or provide a copy of the administrative record to the other Appeal Panel members for their independent review.

(e) The Appeal Panel may initiate an investigation of any statement or material contained in the request for an Appeal Panel review and use any relevant facts obtained by such investigation in the conduct of the final decision process. The Appeal Panel may solicit and accept submissions from either the individual or DOE officials that are relevant to the final decision process and may establish appropriate time frames to allow for such submissions. The Appeal Panel may also consider any other source of information that will advance the final decision process, provided that both parties are afforded an opportunity to respond to all third party submissions. All information obtained by the Appeal

Panel under this section shall be made a part of the administrative record.

(f) Within 45 work days of the closing of the administrative record, the Appeal Panel shall render a final written decision in the case predicated upon an evaluation of the administrative record, findings as to each of the allegations contained in the notification letter, and any new evidence that may have been submitted pursuant to § 710.30. Prior to the Appeal Panel reaching its decision, the Director, Office of Security Affairs, shall remind the other panel members that, in accordance with the requirements of Part 3—Access Eligibility Standards of Executive Order 12968, any doubt regarding access eligibility shall be resolved in favor of the national security. If a majority of the Appeal Panel members determine that it will not endanger the common defense and security and will be clearly consistent with the national interest, the Director, Office of Security Affairs, shall grant or reinstate access authorization for the individual; otherwise, the Director, Office of Security Affairs, shall deny or revoke access authorization for the individual. The Appeal Panel written decision shall be made a part of the administrative record.

(g) The Director, Office of Security Affairs, through the Director, Office of Safeguards and Security, shall inform in writing the individual involved and counsel or representative of the Appeal Panel's final decision. A copy of the correspondence shall also be provided to the other panel members and the Manager.

(h) If, upon receipt of a written request for a review of the individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that the individual is the subject of an unresolved inquiry or investigation of a matter that could reasonably be expected to affect the individual's DOE access authorization eligibility, the Director may defer action by the Appeal Panel on the request until the inquiry or investigation is completed and its results available for review by the Appeal Panel. In such instances, the Director, Office of Security Affairs, shall:

(1) Obtain written approval from the Secretary to defer review of the individual's case by the Appeal Panel for an initial interval not to exceed 90 calendar days;

(2) Advise the individual and appropriate DOE officials in writing of the initial deferral and the reason(s) therefor;

(3) Request that the individual's employment status not be affected during the initial and any subsequent deferral interval, except at the written request of the individual;

(4) Obtain written approval from the Secretary to extend the deferral for each subsequent 90 calendar day interval and advise in writing all concerned parties of the Secretary's approval;

(5) Inform in writing all concerned parties when the inquiry or investigation has been completed and the results made available to the Appeal Panel.

(i) If, upon receipt of a written request for review of an individual's case by the Appeal Panel, the Director, Office of Security Affairs, is aware or subsequently becomes aware of information that adversely affects the individual's DOE access authorization eligibility and which can not for national security reasons be disclosed in the proceedings before a DOE Hearing Officer, the Director may refer the information and the administrative record to the Secretary for the final decision as to the individual's DOE access authorization eligibility. In such instances, the Director, Office of Security Affairs, shall notify in writing all concerned parties that the individual's case has been provided to the Secretary for a final decision in accordance with § 710.31 of this subpart.

15. Newly redesignated § 710.30 is amended by replacing the word ''determination'' with the word ''decision'' in paragraph (a) and replacing the words ''an opinion'' with the words ''a decision'' in paragraph (b)(1), by replacing the word ''getting'' with the word ''receiving'' in paragraph (b)(1), and by revising paragraph (b)(2) to read as follows:

§ 710.30 New evidence.

* * * * *

(b)(2) In those cases where the Hearing Officer's decision has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Security Affairs. In the event that the Director, Office of Security Affairs, determines that the new evidence shall be received, he shall determine the form in which it, and the other party's response, shall be received.

* * * * *

16. Newly redesignated § 710.31 is revised to read as follows:

§ 710.31 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of §§ 710.26(l) or (o), or the opportunity to review and respond to the information provided by the Director, Office of Security Affairs, to the Secretary under § 710.29(i), only the Secretary may issue a final decision to deny or revoke DOE access authorization for the individual after personally reviewing the administrative record and any additional material provided by the Director, Office of Security Affairs. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the circumstances described in §§ 710.26(l) or (o), or 710.29(i) are present, and such determination shall be final.

(b) Whenever the Secretary issues a final decision as to the individual's DOE access authorization eligibility, the individual and other concerned parties will be notified in writing, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each of the allegations contained in the notification letter and each substantial issue identified in the statement in support of the request for review to the extent allowed by the national security.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material.

(d) Only the Secretary may approve initial and subsequent requests under section 710.29(h) by the Director, Office of Security Affairs, to defer the review of an individual's case by the Appeal Panel.

17. Newly redesignated § 710.32 is revised to read as follows:

§ 710.32 Reconsideration of access eligibility.

(a) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision granting or reinstating access authorization for an individual, the individual's access authorization eligibility shall be reconsidered as a new administrative review under the procedures set forth in this subpart when previously unconsidered derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility.

(b) If, pursuant to the procedures set forth in §§ 710.20 through 710.31 of this subpart, the Manager, Hearing Officer, Appeal Panel, or the Secretary has made a decision denying or revoking access authorization for the individual, the individual's access authorization eligibility may be reconsidered only when the individual so requests, when there is a bona fide offer of employment requiring access to Restricted Data, national security information, or special nuclear material, and when there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of rehabilitation or reformation.

(c) A request for reconsideration shall be submitted in writing to the Director, Office of Security Affairs, accompanied by an affidavit setting forth in detail the new evidence or evidence of rehabilitation or reformation. The Director, Office of Security Affairs, shall decide and notify the individual as to whether the individual's access authorization shall be reconsidered and, if so, the method by which reconsideration shall be accomplished.

(d) Final decisions regarding access authorization eligibility in reconsideration cases shall be made by the Appeal Panel.

18. Newly redesignated § 710.33 is revised to read as follows:

§ 710.33 Terminations.

If the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final decision as to the individual's access authorization eligibility, unless a final decision has been rendered prior to the DOE being notified of the change in the individual's pending access authorization status.

19. Newly redesignated § 710.35 is revised to read as follows:

§ 710.35 Timeframes.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by a Manager, Hearing Officer, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

20. Section 710.36 is added to read as follows:

§ 710.36 Acting officials.

Except for the Secretary, the responsibilities and authorities conferred in this subpart may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: the Local Director of Security, the Manager, the Director, Office of Safeguards and Security, or the General Counsel. The responsibilities and authorities of the Director, Office of Security Affairs, may be exercised in his absence only by the Deputy Director, Office of Security Affairs.

21. Appendix B to subpart A of Part 710 is added to read as follows:

Appendix B to Subpart A of Part 710—Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968

(The following guidelines, included in this subpart for reference purposes only, are reproduced as provided to the DOE by the Security Policy Board. The President may change the guidelines without notice.)

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

1. *Introduction.* The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs and are to be used by government departments and agencies in all final clearance determinations.

2. *The Adjudicative Process.* (a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, to include knowledgeable participation;

(3) the frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct;

(5) the voluntariness of participation;

(6) the presence or absence of rehabilitation and other pertinent behavioral changes;

(7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and

(9) the likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.

(c) The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following, each of which is to be evaluated in the context of the whole person concept, as explained further below:

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign influence;

(3) GUIDELINE C: Foreign preference;

(4) GUIDELINE D: Sexual behavior;

(5) GUIDELINE E: Personal conduct;

(6) GUIDELINE F: Financial considerations;

(7) GUIDELINE G: Alcohol consumption;

(8) GUIDELINE H: Drug involvement;

(9) GUIDELINE I: Emotional, mental, and personality disorders;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Security violations;

(12) GUIDELINE L: Outside activities;

(13) GUIDELINE M: Misuse of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding, the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) was truthful and complete in responding to questions;

(3) sought assistance and followed professional guidance, where appropriate;

(4) resolved or appears likely to favorably resolve the security concern;

(5) has demonstrated positive changes in behavior and employment;

(6) should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

Guideline A: Allegiance To The United States

3. *The Concern.* An individual must be of unquestioned allegiance to the United States.

The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;

(b) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;

(d) involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) the individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) the person has had no recent involvement or association with such activities.

Guideline B: Foreign Influence

6. *The Concern.* A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

(b) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(c) relatives, cohabitants, or associates who are connected with any foreign country;

(d) failing to report, where required, associations with foreign nationals;

(e) unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;

(f) conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;

(g) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;

(h) a substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

8. *Conditions that could mitigate security concerns include:*

(a) A determination that the immediate family member(s) (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(b) contacts with foreign citizens are the result of official United States Government business;

(c) contact and correspondence with foreign citizens are casual and infrequent;

(d) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons or organizations from a foreign country;

(e) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Guideline C: Foreign Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) The exercise of dual citizenship;

(b) possession and/or use of a foreign passport;

(c) military service or a willingness to bear arms for a foreign country;

(d) accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

(e) residence in a foreign country to meet citizenship requirements;

(f) using foreign citizenship to protect financial or business interests in another country;

(g) seeking or holding political office in the foreign country;

(h) voting in foreign elections; and

(i) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

(c) activity is sanctioned by the United States;

(d) individual has expressed a willingness to renounce dual citizenship.

Guideline D: Sexual Behavior

12. *The Concern.* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgment or discretion. (The adjudicator should also consider guidelines pertaining to criminal conduct (Guideline J) and emotional, mental, and personality disorders (Guideline I) in determining how to resolve the security concerns raised by sexual behavior.) Sexual orientation or preference may not be used as a basis for a disqualifying factor in determining a person's eligibility for a security clearance.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) Compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive high-risk behavior or that which is symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The behavior was not recent and there is no evidence of subsequent conduct of a similar nature;

(c) There is no other evidence of questionable judgment, irresponsibility, or emotional instability;

(d) The behavior no longer serves as a basis for coercion, exploitation, or duress.

Guideline E: Personal Conduct

15. *The Concern.* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

(b) Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying also include:*

(a) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

(b) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

(d) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

(e) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

(f) Association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

(b) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

(c) The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

(d) Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

(e) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

(f) A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

(g) Association with persons involved in criminal activities has ceased.

Guideline F: Financial Considerations

18. *The Concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A history of not meeting financial obligations;

(b) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(c) Inability or unwillingness to satisfy debts;

(d) Unexplained affluence;

(e) Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior was not recent;

(b) It was an isolated incident;

(c) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

(d) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

(e) The affluence resulted from a legal source; and

(f) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G: Alcohol Consumption

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(d) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(e) Habitual or binge consumption of alcohol to the point of impaired judgment;

(f) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

23. *Conditions that could mitigate security concerns include:*

(a) The alcohol related incidents do not indicate a pattern;

(b) The problem occurred a number of years ago and there is no indication of a recent problem;

(c) Positive changes in behavior supportive of sobriety;

(d) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Guideline H: Drug Involvement

24. *The Concern.*

(a) Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

(b) Drugs are defined as mood and behavior altering substances and include: (1) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances.

(c) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);

(b) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

(c) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(d) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(e) Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination.

26. *Conditions that could mitigate security concerns include:*

(a) The drug involvement was not recent;

(b) The drug involvement was an isolated or aberrational event;

(c) A demonstrated intent not to abuse any drugs in the future;

(d) Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.

Guideline I: Emotional, Mental, and Personality Disorders

27. *The Concern.* Emotional, mental, and personality disorders can cause a significant defect in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially

disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;

(b) Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g., failure to take prescribed medication;

(c) A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;

(d) Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

29. *Conditions that could mitigate security clearance concerns include:*

(a) There is no indication of a current problem;

(b) Recent opinion by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured, under control or in remission and has a low probability of recurrence or exacerbation;

(c) The past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

Guideline J: Criminal Conduct

30. *The Concern.* A history or pattern of criminal activity creates a doubt about a person's judgment, reliability and trustworthiness.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

(b) A single serious crime or multiple lesser offenses.

32. *Conditions that could mitigate security concerns include:*

(a) The criminal behavior was not recent;

(b) The crime was an isolated incident;

(c) The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

(d) The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

(e) Acquittal;

(f) There is clear evidence of successful rehabilitation.

Guideline K: Security Violations

33. *The Concern.* Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Unauthorized disclosure of classified information;

(b) Violations that are deliberate or multiple or due to negligence.

35. *Conditions that could mitigate security concerns include actions that:*

(a) Were inadvertent;

(b) Were isolated or infrequent;

(c) Were due to improper or inadequate training;

(d) Demonstrate a positive attitude towards the discharge of security responsibilities.

Guideline L: Outside Activities

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with:

(a) A foreign country;

(b) Any foreign national;

(c) A representative of any foreign interest;

(d) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;

(b) The individual terminates employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

Guideline M: Misuse of Information Technology Systems

39. *The Concern.* Noncompliance with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information. Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system;

(b) Illegal or unauthorized modification destruction, manipulation or denial of access to information residing on an information technology system;

(c) Removal (or use) of hardware, software, or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

(d) Introduction of hardware, software, or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations.

41. *Conditions that could mitigate security concerns include:*

(a) The misuse was not recent or significant;

(b) The conduct was unintentional or inadvertent;

(c) The introduction or removal of media was authorized;

(d) The misuse was an isolated event;

(e) The misuse was followed by a prompt, good faith effort to correct the situation.

[FR Doc. 99–20841 Filed 8–13–99; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–41]

RIN 3069–AA80

Advance Participations; Sales of Whole Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing Federal Home Loan Bank (Bank) advances to approve the sale of whole advances between Banks under certain limited circumstances. The amendment is consistent with the Finance Board's efforts to devolve ministerial and routine business matters to the Federal Home Loan Banks.

DATES: The Finance Board will accept comments in writing on or before September 15, 1999.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Senior Financial Analyst, Office of Policy, Research and Analysis, by telephone (202) 408–2866 or by electronic mail at *curtisj@fhfb.gov;* Jane S. Converse, Attorney-Advisor, Office of General Counsel, by telephone at (202) 408–2976 or by electronic mail at *conversej@fhfb.gov;* or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, by telephone (202) 408–2990 or electronic mail at *crowleyn@fhfb.gov,* Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(d) of the Federal Home Loan Bank Act (Bank Act) authorizes any Bank to sell whole advances, or participations in advances, to any other Bank, subject to Finance Board approval. *See* 12 U.S.C. 1430(d).

The Finance Board has approved the sale and purchase of participation interests in Bank advances through the adoption of § 935.16. *See* 12 CFR 935.16. The Finance Board has not similarly approved the sale and purchase of whole advances between Banks, which has meant that such transactions still must be submitted to the Finance Board for approval.

Requests for Finance Board approval of the sales of whole advances between Banks have resulted from the merger or consolidation of members in different Bank districts, and the resultant cancellation of the charter and membership of the non-surviving member or members. Consequently, the surviving institution, which is a member of one Bank, typically has advances outstanding from two Banks. The Bank to which the disappearing member formerly belonged can retain the advance until it matures. The member, however, usually prefers the advance to be sold to its current Bank, because as long as the advance remains outstanding with the other Bank, the member must maintain collateral and stock at both Banks. While not required to call the advances, the Bank of the former member usually is willing to sell them to the other Bank. It is in this context that all recent requests for Finance Board approval have occurred. Such sales and purchases of advances have involved no safety and soundness issues, and the Banks that have participated in these transactions have negotiated the terms of the sales without Finance Board involvement.

Finance Board approval of such sale and purchase of whole advances has been granted routinely, typically through a Chairman's Order. In processing these requests, Finance Board staff has required that Banks provide certain information as a condition of approval. The information required includes the submission of a Sale, Purchase and Consent Agreement, or similar document, signed by both Banks and the acquiring member. In addition, the Banks must submit a listing, identification, and description of the advance or advances to be sold and a short history recounting the merger or other consolidation activity.

Prior to this year, the Finance Board would receive, on average, one or two advance sale and purchase requests per year. However, due to the increasing consolidation of the financial services industry, such requests have increased. Four were processed during the first six months of this year. The Finance Board expects to receive additional requests before the year's end, and is certain that the number of sale and purchase transactions will continue to increase.

Therefore, the Finance Board is proposing to approve by regulation any sale and purchase of advances between Banks that meets the conditions set forth in the regulation, which are much the same conditions as those that are currently imposed during case-by-case review. Any other advances transfers still must be submitted to the Finance Board for approval.

II. Analysis of the Proposed Rule

For the reasons discussed above, the Finance Board proposes to amend § 935.16 to approve the sale of advances between Banks under certain conditions. In addition, the section will be retitled and the current provisions regarding participations shall be redesignated as a separate paragraph.

A new paragraph (b) will be added to set forth specific criteria which would approve the sale and purchase of advances between Banks that occur as a consequence of a merger or other business combination of two or more members of different Banks, or where a member has become a member of another Bank, such as through a relocation of its principal place of business. Although the requests received to date have arisen as a result of mergers, it is possible for a member to redesignate, its principal place of business to another district in certain circumstances. *See* 12 CFR 933.18(c). In that case, the issues about a transfer of the outstanding advances would be much the same as those in a merger. Accordingly, the Finance Board requests comment on whether the regulation should apply to such transfers of Bank membership and, if so, whether any conditions other than those that apply in a merger context should be included.

Paragraph (b) also sets forth the following requirements that the sale and purchase transaction must meet in order for it to be approved by the Finance Board pursuant to the regulation: the sale and purchase of the advance(s) must be conducted pursuant to a written agreement between the Banks that identifies the advance(s) to be sold and sets forth the terms and conditions of the sale and purchase; the board of directors of each Bank must approve the sale and purchase and the terms of the agreement; the advance(s) must remain fully secured by eligible collateral at all times; the member of the Bank to which the advance(s) is being sold must purchase not less than the minimum amount of stock of the Bank required to support the advance.

Sales and purchases of Affordable Housing Program (AHP) advances made pursuant to Part 960 of the Finance Board regulations, 12 CFR Part 960, may also be approved pursuant to the regulation, provided that the written agreement includes an additional provision that all parties to the sale agree to comply with the requirements of Part 960, including the project monitoring requirements. The Finance Board believes that the Banks involved in the transaction are best able to assign responsibility for AHP compliance, but requests comment on whether the regulation should be revised to require a particular Bank assume that responsibility.

The proposal would add a new paragraph (c) which would make it clear that sales and purchases of advances that do not meet the requirements for approval pursuant to the regulation must be approved by the Finance Board.

In addition, the Finance Board requests comment on whether there are other circumstances to which the approval by regulation could be extended appropriately.

III. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*

IV. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501, *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends 12 CFR PART 935 as follows:

PART 935–ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Amend § 935.16 by revising the section heading designating the existing text as paragraph (a) and adding the heading *Participations*, and adding new paragraphs (b) and (c) to read as follows:

§ 935.16 Advance participations; sales of whole advances.

(a) *Participations.* * * *

(b) *Sales of whole advances.* A Bank may sell a whole advance to another Bank, and such other Bank may purchase a whole advance, if the following conditions are met:

(1) The member to which the advance(s) was made originally has ceased to exist as a result of a merger or other business combination with and into a member of the purchasing Bank, or has become a member of the purchasing Bank;

(2) The sale and purchase of the advance(s) is done pursuant to a written agreement between the Banks that identifies the advance(s) to be sold and sets forth the terms and conditions of the sale and purchase;

(3) The board of directors of each Bank has approved the sale and purchase and the terms of the agreement described in paragraph (b)(2) of this section;

(4) The advance(s) remains fully secured by eligible collateral at all times;

(5) The member of the purchasing Bank maintains not less than the minimum amount of stock of that Bank required to support the advance; and

(6) If the advance(s) being sold was made pursuant to part 960 of this chapter as an Affordable Housing Program advance, the agreement described in paragraph (b)(2) of this section must provide that the parties will ensure that the advance remains in compliance with all of the requirements of part 960 of this chapter, including monitoring requirements, after the sale.

(c) *Finance Board approval.* Any proposed sale and purchase of an advance that does not meet the requirements of paragraph (b) of this section must be approved by the Finance Board pursuant to section 10(d) of the Bank Act.

Dated: August 6, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–21059 Filed 8–13–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures for other critical life-limited rotating engine parts that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by September 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7134, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–47–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 13, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–12, Amendment 39–11118 (64 FR 17954, April 13, 1999), to require revisions to the Time Limits section in the Engine Manual (EM) for certain Pratt & Whitney (PW) JT9D series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed by PW.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–508–512 to require the additional critical life-limited rotating engine parts to be subject to focused inspection at each piece-part opportunity.

The FAA estimates that 1,372 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Based on these figures the total cost impact of the proposed AD on U.S. operators is estimated to be $82,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11118 (63 FR 40220, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–47–AD. Supersedes AD 99–08–12, Amendment 39–11118.

Applicability: Pratt & Whitney (PW) JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Mandatory Inspections''

(1) Perform inspections of the following parts at each piecepart opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine model (manual P/N)	Part description	Part No.	FPI per inspection
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 648621 and 665321)	648501	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 665321, 719127, and 778621).	666101	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 678541,726641, and 778631).	690501	72–31–04, Inspection –02.
7/7A/7AH/7F, 7H/7J/20/20J (646028*)	Fan Hub (Assy. P/N 726941)	734901	72–31–04, Inspection –02.
59A/70A (754459)	Fan Hub (Assy. P/N 732721, and 804221)	745401	72–31–00, Heavy Maintenance Check.
7Q/7Q3 (777210)	Fan Hub (Assy. P/N 732721, and 804221)	745401	72–31–00, Inspection –03.
7R4's (785059, 785058, 789328)	Fan Hub (Assy. P/N 5001331–01)	5001701–01	72–31–00, Inspection –03.

*P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

Engine model	Part description	FPI per Inspection	FPI per SPOP
59A/70A (754459)	All HPT, 1st disks	72–51–02, HMC–01	72–51–00, HMC–03.
	All HPT, 2nd Disks	72–51–02, HCM–02	72–51–00 HMC–03.
7Q/7Q3 (777210)	All HPT, 1st Disks	72–51–06, Insp–01	72–51–00, Insp–03.
	All HPT, 2nd Disks	72–51–07, Insp–01	72–51–00, Insp–03.
7/7A/7AH/7F 7H/7J/20/20J (646028*)	All HPT, 1st Disks	72–51–02, Insp–01	72–51–00, Insp–03.
	All HPT, 2nd Disks	72–51–02, Insp–03	72–51–00, Insp–03.
7R4's (785058, 785059, and 789328).	All HPT, 1st Disks	72–51–06, Insp/Chk–01	72–51–00, Insp/Chk–03.
	All HPT, 2nd Disks	72–51–07, Insp/Chk–01	72–51–00, Insp/Chk–03.

*P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual to either part number listed in the table above; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS of the manufacturer's ICA.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380 (a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on August 9, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–21178 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–143–FOR; State Program Amendment No. 98–5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes revisions to rules concerning revegetation standards for success for nonprime farmland for surface and underground coal mining and reclamation operations under IC 14–34. Indiana intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., September 15, 1999. If requested, we will hold a public hearing on the amendment on September 10, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on August 31, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, and 914.16.

II. Description of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IND–1664), Indiana sent us an amendment to its program under SMCRA. This amendment replaces State Program Amendment No. 95–2, which we approved in the May 30, 1995 **Federal Register** (60 FR 28069). Indiana sent the amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC). Below is a summary of the changes proposed by Indiana. The full text of the proposed program amendment is available for your inspection at the locations listed above under ADDRESSES.

310 IAC 12–5–64.1 (Surface) and 12–5–128.1 (Underground) Revegetation Standards for Success for Nonprime Farmland

Since the revisions being proposed for surface mining at § 12–5–64.1(c) are identical to those being proposed for underground mining at § 12–5–128.1(c), they will be combined for ease of discussion. These subsections provide the standards for success which are to be applied under the approved postmining land uses.

Indiana proposes paragraph notation changes to reflect the organizational changes made throughout subsections (c). Additionally, Indiana proposes revisions throughout subsections (c) to correct the reference to the ''Soil Conservation Service'' to the ''Natural Resources Conservation Service.''

Indiana proposes to revise subsection (c)(3)(B) by adding the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

Indiana proposes to delete the existing language in subsection (c)(3)(C) for determining production of living plants on pastureland and replace it with the following:

(C) A target yield determined by the following formula: Target Yield = NRCS Target Yield × (CCA/10 Year CA) where: NRCS Target Yield = the average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used, and shall be contained in the appropriate sections of the permit application. CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. 10 Year CA = the ten (10) Year Indiana Agricultural Statistics Service county average, consisting of the year being evaluated and the nine (9) preceding years.

Indiana proposes to add subsection (c)(3)(D) to allow other methods approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land.

Indiana proposes to delete existing subsection (c)(4), and redesignate existing subsections (c)(5), (c)(6), (c)(7), and (c)(8) as subsections (c)(4), (c)(5), (c)(6), and (c)(7), respectively.

At new subsection (c)(5)(B), Indiana proposes to revise the existing language by adding the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

At new subsection (c)(5)(C), Indiana proposes to delete the existing language for determining production of living plants on cropland and replace it with the following:

(C) A target yield determined by the following formula: Target Yield = CCA x (NRCSP/NRCSC) where: CCA = the county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service. NRCSP = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which existed on the permit at the time the permit was issued. NRCSC = the weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil which is shown to exist in the county on the most current county soil survey. A croppable soil is any soil which the Natural Resources Conservation Service has defined as being in capability class I, II, III, or IV.

Indiana also proposes to add new subsections (c)(5)(D) and (c)(5)(E) to allow other methods approved by the director of the Indiana Department of Natural Resources (IDNR) to be used in determining success of production of living plants on revegetated nonprime farmland pasture land. Once the method for establishing the standards has been selected, it may not be modified without the approval of the director of IDNR.

Finally, Indiana proposes to revise the language in new subsection (c)(6) by removing the requirement that if current Natural Resources Conservation Service predicted yield by soil map units are used to determine production of living plants, then the standard for success shall be a weighted average of the predicted yields for each unmined soil type which existed on the permit areas at the time the permit was issued.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. IN–143–FOR,'' your name, and your return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under ''DATES'' or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on August 31, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 6, 1999.

Charles Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–21138 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN48–01–7273b; FRL–6415–3]

Approval and Promulgation of State Implementation Plan; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a December 31, 1998, request from the Minnesota Pollution Control Agency for new air pollution control requirements for the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Marathon Ashland Petroleum LLC (Marathon). These requirements were submitted in the form of an Administrative Order (Order) and include revisions associated with the addition of a new stack, revised emission limits for numerous sources and other changes. The revisions result in an overall decrease in allowable SO_2 emissions from the facility. The new requirements have been evaluated through a computerized modeling analysis and have shown that they will attain and maintain the National Ambient Air Quality Standard (NAAQS) for SO_2.

In the final rules section of the **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because EPA views this action as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule with be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressd in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: We must receive comments by September 15, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Randall Robinson, Meteorologist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Randall Robinson before visiting the Region 5 Office.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–21013 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R1–052–7211b; A–1–FRL–6417–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut on February 7, 1996 and February 18, 1999, providing that the national low emission vehicle (National LEV) is an acceptable compliance option for new motor vehicles sold in the State, which had previously adopted the California low emission vehicle (CAL LEV) program. Auto

manufacturers have agreed to sell these cleaner vehicles throughout the State for the duration of the National LEV program. This SIP revision is required as part of the agreement between States and automobile manufacturers to ensure the continuation of this program to bring clean cars throughout the country, beginning with 1999 model year vehicles. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 15, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, (LE–131), Washington, DC 20460. In addition, the information is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–21005 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI91–01–7322b; FRL–6414–8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site specific revision to the Wisconsin sulfur dioxide (SO_2) State Implementation Plan (SIP) for Murphy Oil, located in Superior, Wisconsin. In its submittal, the State has requested that we approve alternate SO_2 emission limits for Murphy Oil into the Wisconsin SIP. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by September 15, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–21001 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–039–7166b; A–1–FRL–6416–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve New Hampshire's General Conformity Rule, incorporating it into the State Implementation Plan (SIP). In the Final Rules section of this **Federal Register**, EPA is approving New Hampshire's SIP submittal as a direct final rule without prior proposal because we view it as noncontroversial and anticipate no adverse comments. See the direct final rule for detailed rationale for the approval. If EPA receives no adverse comments in response to this action, no further activity is contemplated. If EPA does receive adverse comments, we will withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

DATES: Written comments must be received on or before September 15, 1999.

ADDRESSES: You may mail comments to Susan Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region 1 (CAA), One Congress Street, Suite 1100 (CAA), Boston, MA 02114. You may also email comments to cairns.matthew@epa.gov.

You may review copies of the relevant documents to this action by appointment during normal business hours at the Office of Ecosystem Protection, EPA Region 1, One Congress Street, Boston, Massachusetts; the Air and Radiation Docket and Information Center, USEPA, 401 M Street, S.W., (LE–131), Washington, DC; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns at 617–918–1667 or cairns.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule, which is located in the Rules section of this **Federal Register**.

Dated: July 12, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–21003 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[FRL–6422–5]

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The EPA is reopening the comment period for the proposed rulemaking under section 126 of the Clean Air Act (CAA) that was published on June 24, 1999 (64 FR 33962), regarding petitions submitted by eight Northeastern States for the purpose of mitigating transport of ozone. The June 24 proposal established a 45-day comment period, which ended on August 9. The EPA believes this provided an adequate opportunity to comment on the specific issues raised by the proposal. However, in response to two requests from the public, EPA is extending the comment period to August 25, 1999.

DATES: The EPA is reopening the comment period to end on August 25, 1999.

ADDRESSES: Comments may be submitted (in duplicate form if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347.

SUPPLEMENTARY INFORMATION:

Background on June 24, 1999 Proposal

The June 24 action proposed to amend two aspects of the final rule, issued on April 30, 1999, regarding petitions submitted by eight Northeastern States for the purpose of mitigating transport of one of the main precursors of ground-level ozone, nitrogen oxides (NOX), across State boundaries (see 64 FR 28250, May 25, 1999). The proposal was necessary to address issues rising from two recent court rulings related to the 8-hour ozone national ambient air quality standard and the NOX State implementation plan call (NOX SIP call). The EPA is not reopening the remainder of the April 30 final rule for public comment and consideration.

Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). The EPA has added a new section to that docket for purpose of the June 24 proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonabale copying fee may be charged for copying. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. No confidential business information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments on the June 24, 1999 proposed rulemaking may be filed online at many Federal Depository Libraries.

In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126. This notice of reopening the comment period was made immediately available after signature on that web site as well as on EPA's Airlinks web site at http://www.epa.gov/airlinks.

Dated: August 10, 1999.

Robert Brenner,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 99–21157 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Darling Hill Dump site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Darling Hill Dump Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Vermont, EPA has determined that the responsible parties have implemented all appropriate response actions required.

DATES: Comments concerning this site must be submitted on or before September 15, 1999.

ADDRESSES: Comments may be mailed to: William Lovely, Remedial Project Manager, U.S. EPA Region I , 1 Congress Street, Suite 1100 (HBT), Boston, MA 02114–2023.

Comprehensive information on this site is available through the EPA Region I public records center, which is located at EPA's Region I office and is available for viewing by appointment only Monday through Friday, excluding holidays. Requests for appointments or copies of the contents from the Regional records should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Boston, MA 02114–2023, (617) 918–1440.

A copy of the public records is also available for viewing at the Darling Hill Dump Site information repository at: Town Hall, Town of Lyndon, 24 Main St., Lyndonville, VT 05851.

FOR FURTHER INFORMATION CONTACT: William Lovely, Remedial Project Manager, U.S. EPA Region I, 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1240.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency, Region I announces its intent to delete the Darling Hill Dump, Lyndon, Vermont, from the National Priorities List (NPL) which constitutes appendix B of the NCP (40 CFR part 300), and requests public comment on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this proposal for thirty (30) days after publication of this document in the **Federal Register**.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1) of the NCP, sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response actions by responsible parties are appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL also should be used before the sites are deleted. Comments also were received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Formal notice and comment procedures for delisting sites from the NPL were subsequently added as part of the March 8, 1990 amendments to the NCP (55 FR 8666 and 8846). Those procedures are set out in § 300.425(e)(4) of the NCP. Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

Upon determination that at least one of the criteria described in § 300.425(e)(1) has been met, EPA may formally begin the deletion process. The following procedures were used for the intended deletion of this site:

(1) EPA Region I issued a Record of Decision which documented that no further CERCLA action is required at the Darling Hill Dump Site.

(2) EPA Region I has recommended deletion and prepared the relevant documents.

(3) The State of Vermont has concurred with EPA's decision to delete. The State has not made the determinations which underlie the decision to delete.

(4) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties.

(5) The Region has made all relevant documents available in the Regional Office and the local site information repository.

These procedures have been completed for the Darling Hill Dump Site. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the site, announces the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, the EPA Regional Office (Region I) will evaluate the comments before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address comments received during the public comment period. The responsiveness summary will be made available to the public at the information repository. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, after receiving public comments, a final notice of deletion will be published in the **Federal Register**. However, it is not until a final notice of deletion is published in the **Federal Register** that the site would be actually deleted.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for delisting the Darling Hill Dump site from the NPL.

The Darling Hill Dump is an inactive solid waste disposal facility located near the Village of Lyndonville, Vermont, within the Town of Lyndon, in Caledonia County, in the northeast part of Vermont. The 3.5 acre site is located on the top of the north-facing slope of Darling Hill which is bounded to the east and south by Darling Hill Road. The land east of Darling Hill Road slopes steeply downward to the east branch of the Passumpsic River. West of the Darling Hill Dump is a woodland area which slopes steeply down to the west branch of the Passumpsic River.

The Darling Hill Dump operated as a municipal and industrial waste disposal facility from 1952 though 1983. Routine testing by the State of Vermont in 1982 revealed the presence of low level, volatile organic compounds (VOC) in the Village of Lyndonville's Municipal Wellfield. Given the wellfield's close proximity to the Site (0.5 mile), the State of Vermont completed a Preliminary Assessment (PA) and Site Inspection (SI) of the dump in 1985 to determine whether or not it was the source of contamination. The SI report concluded that the dump was a possible source of contamination at the municipal well field and recommended further study. EPA subsequently performed an Expanded Site Inspection

(ESI) of the Darling Hill Dump from 1986 to1989 and concluded that it was the most likely source of contamination. As a result of this conclusion, the Darling Hill Dump was proposed to the NPL in June 1988 and promulgated on October 4, 1989.

Following the addition of the Darling Hill Dump to the NPL, the potentially responsible parties (PRPs) for the site contamination signed two Administrative Orders by Consent in 1989 that required them to: (1) Perform a Remedial Investigation and Feasibility Study under EPA oversight and; (2) install a carbon filtration system at the municipal well field. The purpose of the remedial investigation was to delineate the nature and extent of contamination in all media (i.e. air, soil, surface water, groundwater and sediment) throughout the Site and determine whether such contamination posed a threat to human health and the environment. Installation of the carbon filtration system would prevent ingestion of the low levels of contamination previously identified.

In January 1992, EPA published a fact sheet which summarized the findings of the RI/FS. Although the RI/FS found low levels of contamination in both soil and groundwater, a Baseline Risk Assessment concluded that contamination from the Darling Hill Dump does not pose an unacceptable risk to human health or the environment. Moreover, installation of the carbon filter in the municipal water supply helps to ensure that the groundwater at the municipal well field remains within Federal drinking water standards. The Village of Lyndonville is responsible for monitoring the carbon filtration system and municipal well field.

Based on the results of the RI/FS, a Proposed Plan recommending No Action was released for thirty (30) day public comment period. Following the public comment period, a Record of Decision (ROD) for the Site was signed on June 30, 1992. The ROD documented the decision that no further CERCLA action was necessary at the Darling Hill Dump. As such, the statutory requirements of CERCLA section 121 for remedial actions are not applicable and no five year review is required. However, to ensure the long term effectiveness of the initial actions, EPA and the PRPs entered into an Administrative Order by Consent which required a minimum of five years of post-ROD monitoring. This monitoring concluded in 1997 since the analytical results supported the earlier decision that no further CERCLA actions were necessary.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''Responsible parties or other persons have implemented all appropriate response actions required.'' EPA, with concurrence from the State of Vermont, believes that this criterion for deletion has been met. As a result, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the public records center.

Dated: July 29, 1999.

Donald Berger,

Acting Director, Office of Site Remediation and Restoration, Region I.

[FR Doc. 99–21010 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Materials Technology Laboratory—Watertown Arsenal Development Corporation parcel and Commander's Quarters parcel (also known as Zones 1–4) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Watertown Arsenal Development Corporation (WADC) parcel and the Commander's Quarters parcel (jointly known as Zones 1–4) of the Materials Technology Laboratory (MTL) site from the National Priorities List (NPL) and request public comment on this action. Zones 1 through 4 of MTL include a portion of Operable Unit (OU) No. 1 and OU No. 3. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete Zones 1 through 4 of OU No. 1 and OU No. 3 on the determination by EPA and the Commonwealth of Massachusetts, through the Department of Environmental Protection, that all appropriate actions under CERCLA have been implemented. Moreover, EPA and the Commonwealth have determined that remedial activities conducted to date at OU No. 1 (Zones 1 through 4) and OU No. 3 have been protective of human health, welfare and the environment. Institutional controls, which have been established as part of the remedy, will ensure continued protectiveness in the future. Institutional controls are provided for in a Grant of Environmental Restriction and Easement.

This partial deletion pertains only to Zones 1 through 4 of OU No. 1 and OU No. 3 of the MTL Site and does not include the River Park portion of OU No. 1 or OU No. 2. The River Park Portion of OU No. 1 and OU No. 2 will remain on the NPL, and response activities will continue at these OUs.

DATES: The EPA will accept comments concerning its proposal for partial deletion until September 15, 1999.

ADDRESSES: Comments may be mailed to: Ms. Meghan Cassidy, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, One Congress Street, Suite 1100–HBT, Boston, MA 02114–2023.

Comprehensive information on the MTL Site, the Administrative Record for OU Nos. 1 and 3, and the Deletion Docket for this partial deletion is maintained at the following information repository: Watertown Free Library, 123 Main Street, Watertown, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. Meghan Cassidy, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, One Congress Street, Suite 1100–HBT, Boston, MA 02114–2023, (617) 918–1387.

SUPPLEMENTARY INFORMATION:

I. Introduction
II NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region I announces its intent to delete a portion of the Material Technology Laboratory (MTL) Superfund Site located in Watertown, Middlesex County, Massachusetts from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposed partial deletion.

This proposal for partial deletion pertains to the portion of OU No. 1, which includes the areas known as the WADC and the Commander's Quarters parcels. In addition, this proposal for partial deletion pertains to OU No. 3 which includes Area I. OU No. 3 is within the WADC parcel. These parcels are also known as Zones 1–4. Zones 1 through 4 are bounded by Arsenal Street to the north; Talcott Street to the east; North Beacon Street to the south; and the Burnham Manning Post #1105, Veterans of Foreign War to the west. A figure and the exact coordinates that define the deleted property at the Site are contained in the NPL Deletion Docket.

Section II of this document explains the criteria for partially deleting portions of a site from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the MTL Site and explains how partial deletion criteria are met for this Site.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA must determine, in consultation with the state, whether any of the following criteria have been met: (i) Responsible parties or other parties have implemented all appropriate response actions required; (ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or (iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Site releases may not be deleted from the NPL until the state in which the site is located has concurred with the proposed deletion. EPA is required to provide the state with thirty (30) working days for review of the deletion document prior to its publication in the **Federal Register**.

As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL are eligible for further remedial actions should future conditions warrant such action. If new information becomes available which indicates the need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended partial deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further CERCLA response is appropriate; (2) the Commonwealth of Massachusetts has concurred with the partial deletion; (3) a notice has been published in the local newspaper and has been distributed to the appropriate Federal, State and local officials and other interested parties announcing the commencement of the 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repository.

Deletion from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As mentioned in Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

EPA's Region I office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete the specified parcel. If necessary, Region I will prepare a Responsiveness Summary to address any significant public comments received.

If EPA determines, with the State's concurrence, that the partial deletion is appropriate after consideration of public comment, then EPA will place a final Notice for Partial Deletion in the **Federal Register**, completing the process. Public notices and copies of the Responsiveness Summary, if necessary, will be available in the site information repository.

IV. Basis for Intended Partial Site Deletion

The following summary provides EPA's rationale for the proposed deletion of the Watertown Arsenal Development Corporation (WADC) and Commander's Quarters parcels of MTL Site from the NPL.

Site Description

MTL is located in Watertown, Massachusetts. The approximately 47.5-acre MTL NPL site, is located on the north bank of the Charles River, approximately five miles west of Boston. MTL is bounded by Arsenal Street to the north; a fence line located beyond Talcott street to the east; the Charles River to the south; and to the west by the Veterans of Foreign Wars, USA, Burnham Manning Post No. 105 and other private properties. To facilitate the environmental investigation and remediation, and ultimate transfer of the property, MTL was divided into several parcels.

The WADC Parcel , an approximately 29.42-acre property, provides the entire northern boundary of the MTL site along Arsenal Street and is bounded to the east by Talcott Street to the fence line; to the southeast by the Commander's Quarters Parcel; and to the south by North Beacon Street. The WADC Parcel, constitutes over 60 percent of the entire MTL site. Future use of the WADC Parcel includes industrial/commercial and limited residential purposes.

The Commander's Quarters Parcel is approximately 7.21 acres, and covers the southeastern corner of the site north of North Beacon Street. The Commander's Quarters Parcel is bounded to the west and north by the WADC parcel; to the east by Talcott Street to the fence line; and to the south by North Beacon Street. This parcel constitutes approximately 15 percent of the MTL site. The plan for the landscaping of the grounds on this parcel was developed by the Olmsted Brothers, a prominent landscape architecture firm. The Commander's residence located on the Commander's Quarters Parcel and grounds are listed on the National Register of Historic Places. The Commander's Quarters Parcel has a designated future use as open space/park land.

No wetlands or surface waters are located at either the WADC or Commander's Quarters Parcels. The groundwater beneath these parcels is not considered suitable as a potential source of drinking water based on the classification by the Massachusetts Department of Environmental Protection.

Site History

MTL was established in 1816 and has been used throughout the years for a variety of missions, including storage, repair and issue of small arms and ordnance supplies; material testing, arms manufacturing; and as the home of the Army's first materials research nuclear reactor (deactivated in 1970).

Historical property uses on the WADC Parcel include miscellaneous industrial activities to support the facility's mission. The buildings and structures situated within the WADC parcel (both existing and demolished) served a variety of purposes, especially research, prototype development, and other industrial uses. There are two buildings within the WADC Parcel that were used for residential purposes.

The Commander's Quarters Parcel includes four structures including the former Commander's residence, two storage bunkers and a Sentry Station. Also included are a tennis court and garden area. Past use of this parcel was for residential and open space purposes.

In 1994, EPA added MTL to the NPL on May 31, 1994 (59 FR 27989). In 1995, the Army and EPA entered into a Federal Facility Agreement to coordinate environmental activities at MTL. In 1989, the Department of Defense designated MTL for closure as an active military facility under the Base Realignment and Closure Act.

The Army, under the Installation Restoration Program, completed several investigations at MTL. Studies completed at MTL which pertain to the WADC and Commander's Quarters parcels include a Phase I Remedial Investigation (RI) (1991); a Phase 2 RI incorporating a Baseline Risk Assessment (1994); a Final Terrestrial Ecological Risk Assessment (1995); a Final Outdoor Feasibility Study (1996).

The results of these various studies showed that there were various areas on both the WADC and Commander's Quarters parcels where soil contamination exceeded acceptable risk levels for human health. The contaminants of concern included polynuclear aromatic hydrocarbons (PAHs), pesticides and limited PCBs. In addition, several locations in the Commander's Quarters parcel posed a potential risk to ecological receptors based on pesticide and metal contamination. Groundwater beneath the site was not deemed a media of concern based on the State's groundwater classification.

The remedy for the areas of concern contained within the WADC and Commander's Quarters parcels was selected and documented in the Area I Record of Decision (ROD) issued in June 1996; the Soil and Groundwater ROD issued in September 1996; and an Explanation of Significant Difference (ESD) issued in January 1998. The remedy as outlined in the above-mentioned decision documents required excavation of soils in exceedance of established clean-up criteria, off-site disposal of excavated soil, confirmatory sampling to confirm compliance with clean-up criteria, backfilling of excavations with clean fill, and implementation of institutional controls in order to ensure the continued protectiveness of the remedy in the future. The majority of the clean-up levels established were set at background.

The Department of the Army implemented the selected remedy and completed all necessary soil excavation on the WADC and Commander's Quarters parcels in November 1997. Confirmatory soil sampling performed during excavation work documented compliance with the established clean-up criteria. Necessary institutional controls are provided for in a Grant of Environmental Restriction and Easement (Grant). This document spells out the pertinent restrictions for various areas within the WADC and Commander's Quarters parcel and provides survey maps outlining the areas subject to restrictions. Through this Grant, the Department of the Army transferred certain rights to enforce and oversee the institutional controls to the Commonwealth of Massachusetts DEP. The Grant also provides that the Army will retain certain of these enforcement and related access rights which it will hold co-extensively with DEP.

The requirements of OSWER Directive 9355.7–02 dated May 23, 1991, provide that five-year reviews will be conducted as a matter of policy at sites for which the remedy was selected prior to the passage of the Superfund Amendments and Reauthorization Act (SARA); or where hazardous substances will remain on-site above levels that allow for unlimited use and unrestricted exposure. OSWER Directive 9355.7–02A dated July 26, 1994 clarifies that Executive Order 12580 delegates responsibility for five-year reviews at Federal facilities to the Departments of Energy and Defense. Since the level of residual contamination on the WADC and Commander's Quarters parcels requires limitations to the future use of the site, five-year reviews will be performed.

Community Involvement

Community input has been sought by the Materials Technology Laboratory throughout the cleanup process. Community relations activities have included the formation of a Restoration Advisory Board (RAB); regular meetings of the RAB; public meetings/hearings prior to the signing of the RODs; several public notices in local newspapers; and several site tours/open houses at the facility.

A copy of the Deletion Docket can be reviewed by the public at the Watertown Free Library. The Deletion Docket includes this Notice, the RODs, ESD, Remedial Action Reports, Grant of Environmental Restrictions and Easements, and correspondence documenting that no further remedial action is necessary at the WADC and Commander's Quarters parcels (formerly referred to as Zones 1–4).

Current Status

One of the three criteria for site deletion specifies that EPA may delete a site (or portion of a site) from the NPL if ''responsible parties or other parties have implemented all appropriate response actions required.'' EPA believes that this criterion has been met for this partial deletion. In a letter dated December 28, 1998, the Commonwealth of Massachusetts provided their concurrence on the proposed deletion of the WADC and Commander's Quarters parcels, formerly known as Zones 1 through 4, of the Materials Technology Laboratory Site. A copy of this letter is available for review in the Information Repository as part of the Deletion Docket. Subsequently, EPA is proposing partial deletion of these parcels from the NPL.

Dated: July 26, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–21009 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Tansitor Electronics site from the National Priority List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Tansitor Electronics Site from the National Priority List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Vermont Agency of Natural Resources (Vermont ANR) have determined that the Site poses no significant threat to public health or the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site will be accepted on or before September 15, 1999.

ADDRESSES: Address comments to: Terrence Connelly, Remedial Project Manager, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023.

Comprehensive information concerning this Site is available through the EPA Region I public docket, which is located at EPA's Region I office. It is available for viewing by appointment only from Monday through Friday, excluding holidays. Requests for appointment or copies of the contents from the Regional public docket should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1417.

This information is also available for viewing at the Tansitor Electronics Site information repository at the following location: Bennington Free Library, 101 Silver Street, Bennington, Vermont 05201–2403, (802) 442–9051.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, U.S. EPA Region 1, at (617) 918–1373.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
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IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Tansitor Electronics Site in Bennington, Vermont from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites which appear to be a significant risk to the public health and welfare or to the environment. The NPL is maintained as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions without application of the Hazard Ranking System (HRS) in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site from the NPL for thirty days following publication of this document in the **Federal Register** and in newspapers in the vicinity of Bennington, Vermont.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Tansitor Electronics Site, the remedial action which has been carried out, and explains the manner in which the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further remedial action is necessary. When deciding to delete a site from the NPL, EPA shall consider, in consultation with the state, whether the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking further remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, in accordance with CERCLA, EPA will conduct a review at least every five years after the initiation of the remedial action to ensure that the site remains protective of public health and the environment. In the case of the Tansitor Electronics Site, the selected remedy is protective of human health and the environment, but does not allow for unlimited and unrestricted use of the Site. Due to this condition, surveys of the Site will be conducted by the EPA and Vermont ANR to ensure that the remedial action is meeting the requirements of protecting human health and the environment. If new information becomes available which indicates a need for further action, EPA will initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

EPA has taken the following steps in accordance with the agency's deletion procedures:

i. EPA and Vermont ANR surveyed the Tansitor Electronics Site and declared that with the environmental easement, groundwater reclassification, and long-term monitoring in place, it presented no harm to human health or the environment. Following the survey, EPA prepared a Final Close-out Report which documented that no further remedial action is necessary.

ii. EPA has obtained Vermont ANR concurrence with the proposed deletion decision;

iii. A notice has been published in the local newspaper and has been distributed to state and local officials announcing the commencement of a 30-day public comment period of EPA's Notice of Intent to Delete;

iv. All relevant documents have been made available for public review in the EPA Region 1 Records Center and in the local information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or responsibilities. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not render the site ineligible for further response actions.

Prior to deletion of the Tansitor Electronics Site, EPA's Region 1, will accept and evaluate public comments on EPA's Notice of Intent to Delete the Site before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator or his or her designee places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis of Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

The Site consists of approximately 44 acres of land on West Road (Route 9) in the Town of Bennington, Vermont, and is approximately 3.5 miles west of Bennington Center. Most of the Site is located to the north of Route 9, with the remainder of the Site located to the south of Route 9. The portion of the Site located to the south of Route 9 consists of wetlands.

The Site is located in an area zoned rural residential with a commercial corridor overlay along Route 9. As a manufacturing facility, Tansitor's industrial use of the Site represents a grandfathered non-conforming use under the zoning laws. It is bounded to the north by privately owned woodland; to the east by Houran Road and a commercial property; to the south by wetlands; and to the west by agricultural/residential areas. Pleasant

Valley School is located approximately 1,200 feet east and upgradient of the Site. Potable water supplies within the vicinity of the Site, including the water supply on the Site, are provided by private bedrock wells.

Tansitor Electronics, Inc., currently manufactures electronic capacitors at the Site. Major site features include Tansitor's operating manufacturing/office building, an Etch House, a man-made pond (known as the Fire Pond), parking areas, a Solid Waste Disposal Area, a Disposal Area, a Concrete Pad Area, and a Borrow Area.

Since the 1950's, various owners have used the Site as a manufacturing facility for electronic capacitors. Over the period from 1956 and 1979 an estimated equivalent of 117 drums of process waste were disposed in the Disposal Area, with an occasional discharge of waste detergents and dilute acid solutions into the two leach fields or directly into the intermittent stream north of its manufacturing/office building, and some release of process wastes on the Concrete Pad.

Prior to the remedial action, the risk assessment concluded that unacceptable carcinogenic and noncarcinogenic risks would result from ingestion of overburden groundwater for future residents. The risk is based on a future scenario since no individuals are currently ingesting contaminated groundwater at the Site.

After conducting a Remedial Investigation, a Record of Decision (ROD) was issued in 1995 for the Tansitor Electronics Site. The Remedial Action Objectives selected were intended to prevent exposure to the groundwater, prevent migration offsite, and to restore groundwater to drinking water standards if technically practicable. These objectives have been met by the following actions:

- Implementation of an environmental easement to prevent the use of contaminated groundwater;
- Long-term monitoring of groundwater on a regular basis to evaluate changes in conditions over time;
- Establishment of contingencies for future additional investigation or further action should the long-term monitoring reveal that contaminants have migrated beyond their current vertical or horizontal extent; and
- A review of the Site every five years to ensure that the remedy remains protective of human health and the environment.

In addition to the environmental easement, the November 23, 1993 (and subsequently modified on March 15, 1994) Vermont Groundwater Reclassification Order also serves to restrict use of the Site groundwater.

The environmental easement was recorded into the Bennington County Registry of Deeds. Monitoring for the Groundwater Reclassification Order began in May 1994. The monitoring was then adjusted in October 1998 to meet the long-term monitoring requirement of the Record of Decision.

As noted in section II above, EPA may delete a site from the NPL when ''Responsible parties or other persons have implemented all appropriate response actions required''. As EPA, with Vermont ANR concurrence, has determined that this criterion is met, EPA announces its intent to delete the Tansitor Electronics Site from the National Priorities List.

Dated: August 2, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–21008 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6420–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Saco Tannery Waste Pits Site from the National Priority List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Saco Tannery Waste Pits Site from the National Priority List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Maine Department of Environmental Protection (Maine DEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this site will be accepted on or before September 15, 1999.

ADDRESSES: Address comments to: Terrence Connelly, Remedial Project Manager, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114–2023.

Comprehensive information concerning this site is available through the EPA Region I public docket, which is located at EPA's Region I office. It is available for viewing by appointment only from Monday through Friday, excluding holidays. Requests for appointment or copies of the contents from the Regional public docket should be directed to the EPA Region I Records Center.

The address for the Region I Records Center is: EPA Records Center, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1417.

Information concerning this Site is also available for viewing at the information repository at the following location: Dyer Library, 371 Main Street, Saco, Maine 04072, (207) 283–3861 or (207) 282–3031.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly at (617) 918–1373.

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I. Introduction

The Environmental Protection Agency (EPA) Region 1 announces its intent to delete the Saco Tannery Waste Pits (STWP) Site in Saco, Maine from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites which appear to be a significant risk to the public health and welfare or to the environment. The NPL is maintained as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions without application of the Hazard Ranking System (HRS) in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty days following publication of this notice in the **Federal Register** and in newspapers in the vicinity of Saco, Maine.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Saco Tannery Waste Pits Site, the remedial action which has been carried out, and explains the manner in which the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further remedial action is necessary. When deciding to delete a site from the NPL, EPA shall consider, in consultation with the state, whether the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking further remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of the Saco Tannery Waste Pits Site, the selected remedy is protective of human health and the environment, but does not allow for unlimited and unrestricted use of the site. Due to this condition, surveys of the site will be conducted by the EPA and Maine DEP to ensure that the remedial action is meeting the requirements of protecting human health and the environment. If new information becomes available which indicates a need for further action, EPA will initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

EPA has taken the following steps in accordance with the agency's deletion procedures:

i. EPA and the Maine DEP surveyed the Saco Tannery Waste Pit Site and declared that the remedial actions are complete and remain protective of human health and the environment. Following the survey, a Final Closure Report has documented that no further remedial action is necessary.

ii. EPA has obtained Maine DEP concurrence with the proposed deletion decision;

iii. A notice has been published in the local newspaper and has been distributed to appropriate state and local officials and other interested parties announcing the commencement of a 30-day public comment period of EPA's Notice of Intent to Delete;

iv. All relevant documents have been made available for public review in the EPA Region 1 Records Center and in local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or responsibilities. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not render the site ineligible for further response actions.

Prior to deletion of the Saco Tannery Waste Pits Site, EPA's Region 1 Office will accept and evaluate public comments on EPA's Notice of Intent to Delete the Site before making a final decision to delete. If necessary, the EPA will prepare a Responsive Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator or his or her designee places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis of Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this site from the NPL.

The 213-acre STWP Site is located in a rural section of Saco, Maine. The Site is bounded by the Maine Turnpike to the east, residential property along Hearn Road to the west, the Saco-Scarborough town line to the north, and Flag Pond Road to the south. Automotive entry to the Site is limited to Flag Pond Road; all-terrain vehicle trails enter the Site from the north and west.

The Site is located in an area which is undergoing a transition from rural farming to suburban residential housing. There were approximately sixty single family homes located within a half-mile radius of the Site at the time of the remedy selection in 1989 and the number has gradually increased as farmland is being turned into residential properties. Residential development is concentrated along Hearn Road and Flag Pond Road. These homes rely on groundwater for their water supply from private drinking wells. The groundwater aquifer in the area of the Site is classified under federal standards as IIB, suitable for public water supplies.

The majority of the Site is forested, both upland and wetland; unforested land consists of remediated areas, scrub-shrub wetlands, and bedrock outcrops. A 100-year flood plain is located within the property boundaries, but none of the waste pits or lagoons are located within the flood plain.

The Saco Tanning Corporation used the site for waste disposal from 1959 to the late 1970s. Upon investigation, fifty-seven waste pits, two lagoons, and two separate areas beyond the waste pits totaling thirteen acres were determined to be contaminated with tannery waste. Contaminants within the site include arsenic, chromium, lead, volatile organic compounds, and semi-volatile organic compounds.

After conducting a Remedial Investigation, a Record of Decision (ROD) was issued in 1989 for the STWP Site. The Remedial Action objectives selected for this site were intended to prevent physical contact with the waste and exposure to the groundwater. The first objective has been met through the creation of a soil cover acting as a physical barrier between humans and wildlife and sludge and sediments in the pits, lagoons, wet and seep areas. The second objective has been met through the enactment of State legislation designating the Site as a Wildlife Preserve. This institutional control prohibits groundwater use on the Site. Long-term monitoring has shown that contaminated groundwater is not flowing off the STWP Site.

The primary remedial action includes:

- A soil cover system comprised of geotextile, rock, stone, till, and vegetation layers;
- Permanent fencing enclosing the waste pits and lagoons;
- Institutional control of designating the entire site, by State of Maine legislative act, as a wildlife preserve;
- Long-term groundwater monitoring;
- Long-term monitoring of surface water and sediments; and
- Wetlands compensation on and offsite for the compensation of wetlands lost through the construction of the soil covers.

The design for the Soil Cover System and Compensatory Wetland Construction was completed in September 1992. The remedial action was phased with initial site work completed in November 1992 and the soil covers phase completed in October

1993. On September 17, 1993 the EPA and the Maine DEP surveyed the site and declared that the soil cover system was completed according to the requirements in the ROD. Revegetation of the area was carried out in October of 1993. Purchase of 247 acres of the nearby Saco Heath from a peat mining company as compensation for the permanent loss of ten wetland acres onsite was completed in December 1993, and restoration of the remaining excavated wetland was completed in September 1994.

Maintenance of the site has included quarterly inspections for the first five years of remediation and semi-annual inspections since then. Per the Superfund State Contract between EPA and Maine DEP, these inspections are to be carried out by the State for thirty years following the remediation. These inspections of the Site will be conducted to ensure that the actions taken to form a physical barrier between humans and wildlife and the waste in the pits and lagoons are maintained. Monitoring of groundwater, surface water, and sediment will continue, as outlined in the O&M Plan, to measure water quality within the site and around the perimeter. These State-performed inspections and monitoring activities began in April 1995.

The survey of the Site and approval of the Remedial Action by the EPA and Maine DEP demonstrated that the Saco Tannery Waste Pits Site no longer poses a threat to human health and welfare or the environment.

As noted in section II above, EPA may delete a site from the NPL when ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate''. As EPA, with Maine DEP concurrence, has determined that this criterion is met, EPA announces its intent to delete the Saco Tannery Waste Pits Site from the National Priorities List.

Dated: August 2, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–21007 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385 and 390

[FHWA Docket No. FHWA–99–5467]

RIN 2125–AE56

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to implement section 4009 of the Transportation Equity Act for the 21st Century (TEA–21) by amending the safety fitness procedures of the Federal Motor Carrier Safety Regulations. This action would prohibit all motor carriers found by the Secretary to be unfit from operating commercial motor vehicles (CMVs) in interstate commerce. The FHWA is proposing to treat an unsatisfactory safety rating under the safety fitness procedure regulations as a determination of unfitness. The FHWA also would revise the listing for locations of motor carrier and highway safety field offices to reflect recent changes to the Federal Highway Administration organizational structure.

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund or Mr. William C. Hill, Office of Motor Carrier Research and Standards, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

Section 4009 of TEA–21 (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) amends 49 U.S.C. 31144 and requires the Secretary of Transportation to maintain by regulation a procedure for determining the safety fitness of an owner or operator [of commercial motor vehicles (CMVs)]. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit. 49 U.S.C. 31144(b).

Because these provisions are very similar to the previous 49 U.S.C. 31144(a)(1), which was enacted by section 215 of the Motor Carrier Safety Act (MCSA) of 1984 (Public Law 98–554, 98 Stat. 2832), the FHWA regulations at 49 CFR parts 385 and 386 already include most of the requirements listed above.

Section 4009 of TEA–21 introduced two important changes. First, it transferred the substance of 49 U.S.C. 5113 to section 31144. Section 5113 codified section 15(b) of the MCSA of 1990 (Public Law 101–500, 104 Stat. 1213, 1218, November 3, 1990), which prohibited motor carriers rated unsatisfactory from using CMVs to transport, in interstate commerce, more than 15 passengers (including the driver) or hazardous materials (HM) in quantities requiring placarding, starting on the 46th day after the rating was issued. The regulation implementing section 5113 has been in effect since 1991 (49 CFR 385.13). By attaching this prohibition to a regulatory standard already used by the FHWA (i.e., unsatisfactory), Congress equated that rating with a determination that passenger and HM motor carriers were not fit to operate on the highways.

Second, section 4009 of TEA–21 prohibits all owners and operators of CMVs not previously subject to 49 U.S.C 5113—that is, those owners and operators using CMVs to transport freight that does not include HM in quantities requiring placarding—from using those vehicles in interstate commerce starting on the 61st day after being found ''unfit.'' Also, Federal agencies are now prohibited from using those owners and operators to provide interstate transportation.

Because 49 U.S.C. 31144(b), as amended by section 4009, provides that ''[t]he Secretary shall *maintain* [emphasis added] by regulation a procedure for determining the safety fitness of an owner or operator,'' the FHWA believes that Congress authorized the continued use of the safety fitness rating regulation in effect on June 9, 1998, the date of enactment of TEA–21, until the agency adopts a final rule based upon this NPRM.

The parallelism between 49 U.S.C. 31144(c)(2) and (3) and the previous 49 U.S.C. 31144(a)(1) leads the FHWA to believe that Congress intended section 4009 to authorize the application of the principles embodied in section 15(b) of the MCSA of 1990 to the entire range of motor carriers that operate CMVs in interstate commerce. The only difference is that carriers of general freight would have 60 days, while passenger and HM carriers have 45 days, after the FHWA makes a determination of ''unfitness'' in which to improve or cease operations. Because the MCSA of 1990 explicitly referred to the three-part rating scheme used by the FHWA (satisfactory, conditional, unsatisfactory) and directed the FHWA to prohibit unsatisfactory rated motor carriers from transporting passengers and HM after the 45 day period, the FHWA has concluded that the functionally equivalent, though not identical, requirements of section 4009 authorize, but do not require, the FHWA to continue using its current safety fitness rating standards and methodology. The FHWA is therefore proposing to use an unsatisfactory rating assigned under the Safety Fitness Rating Methodology (SFRM) in part 385 as a determination of ''unfitness.'' This policy is congruent with that of section 15(b) of the MCSA of 1990. There is nothing in the legislative history concerning section 4009 of TEA–21 that suggests the FHWA should implement a different approach.

The proposed prohibition on the operation of CMVs would not be applied retroactively. Passenger and HM carriers rated unsatisfactory would have either improved their ratings since 1991 or ceased operating in interstate commerce. However, there were significant numbers of general freight carriers that held unsatisfactory ratings at the time TEA–21 was enacted; their operations were not illegal. The prohibition on unfit/unsatisfactory general freight carriers in section 4009 must be understood as applying only to those rated unsatisfactory by the FHWA after the effective date of a final rule generated by this proceeding. However, if a motor carrier that had been rated unsatisfactory prior to the effective date of the final rule received another unsatisfactory rating after the effective date of the final rule as a result of another compliance review, the new provisions would apply and the motor carrier would be required to cease its operations in interstate commerce within 60 days.

Section 4009 also specifies time periods for the FHWA to perform a compliance review requested by an unfit (i.e., unsatisfactory) rated motor carrier. For unsatisfactory carriers of passengers and HM, the follow-up compliance review must be completed within 30 days of the carrier's request; for all other carriers rated unsatisfactory, the follow-up review must be completed within 45 days after the carrier's request.

Under this proposal, the FHWA would continue to perform administrative reviews under § 385.15 and corrective-action reviews under § 385.17 for motor carriers regardless of their projected or final safety rating. The current § 385.15(d) states that the FHWA will notify a petitioning motor carrier of the agency's decision on administrative review within 30 days after the agency receives a petition. The current § 385.17 does not specify a time limit for the FHWA to perform a review based upon a motor carrier's request to change a safety rating because of its corrective actions, but it does allow the agency to extend the period before a proposed safety rating becomes effective for up to 10 days (§ 385.17(d)). The agency is proposing to revise its regulations and procedures, now to be codified at §§ 385.15(c) and 385.17(e), to give priority to reviews of motor carriers with proposed or final unsatisfactory safety ratings because of the prohibition against operating in interstate commerce with such safety ratings.

This priority handling would not extend to non-passenger and non-HM motor carriers with unsatisfactory safety ratings that became final before the effective date of the final rule because the regulation would not be retroactive. Although the FHWA would continue to review proposed and final conditional safety ratings, the agency needs to place a higher priority on the proposed and final unsatisfactory safety ratings because of the severe operational consequences for the affected motor carriers. However, as explained above, if a motor carrier of non-HM freight that held an unsatisfactory safety rating issued prior to the effective date of a final rule were to receive a follow-up proposed unsatisfactory rating after the effective date of a final rule, the FHWA would provide those motor carriers the same priority handling as motor carriers receiving a proposed unsatisfactory safety rating for the first time.

The DOT Office of Inspector General (OIG) has observed that unsatisfactory motor carriers of non-HM freight may continue to operate in interstate commerce under the current regulations. These motor carriers may continue to operate under the proposed regulations unless they were to receive another unsatisfactory rating after the effective date of a final rule. The OIG also contends that some motor carriers of HM freight or of passengers continue to operate despite their unsatisfactory safety ratings, and are doing so illegally. The FHWA intends to carefully track the safety of operations of the first group to ensure that the traveling public is not exposed to increased risk from a motor carrier's operation that has been documented to have fallen below an acceptable level of safety. The agency will bring swift and appropriate enforcement actions against motor carriers that are operating in spite of having been directed to cease their operations in interstate commerce.

Rating Criteria

In the preamble of the 1997 final rule amending 49 CFR part 385 (62 FR 60035), the FHWA announced that it intended to review the entire rating system. On July 20, 1998, the agency published an advance notice of proposed rulemaking (ANPRM) which, among other things, began the process of creating a more performance-based means of determining the safety fitness of motor carriers (63 FR 38788). The FHWA is reviewing the comments to that docket, along with the possibility and practicality of incorporating alternative safety fitness information that would improve the effectiveness of the rating system. For the present, however, the FHWA is proposing to continue using the current SFRM included in appendix B to part 385 until it is ready to propose the elements of a revised process.

The American Trucking Associations (ATA) and Truckers United for Safety had challenged the decision in the 1997 final rule to use an amended version of the FHWA's SFRM that the agency uses to make safety fitness determinations. That challenge was rejected by the U.S. Court of Appeals for the District of Columbia Circuit in *American Trucking Associations, Inc.* v. *United States Department of Transportation*, 166 F. 3d 374 (D.C. Cir. 1999).

The FHWA is continuing its efforts to increase the level of reliable safety data and other information needed to create a more performance-based means of determining a motor carrier's safety fitness. The FHWA conducted a demonstration project, the Commercial Vehicle Information System (CVIS), recently renamed the Performance and Registration Information System Management (PRISM) Program. It also produced a new safety risk assessment model, the Motor Carrier Safety Status Measuring System (SAFESTAT). Both of these were described in the ANPRM of July 20, 1998. The FHWA plans to expand PRISM to as many as five new States this year. However, today's proposed rulemaking action does not reach these issues.

Terms: ''Motor Carrier'' and ''Owner or Operator''

Prior to the 1998 TEA–21 amendment, 49 U.S.C. 31144 applied to ''owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers.'' As amended, the section now refers to these entities as ''owner[s] or operator[s]'' of commercial motor vehicles, but not ''motor carriers.'' Although no explanation is provided in the committee reports, the FHWA believes this was done to cure an anomaly. Section 31144 was the only section in 49 U.S.C. chapter 311 which used the term ''motor carrier;'' it was not included in the definitions in section 31132. The Motor Carrier Safety Act of 1984, from which chapter 311 was derived, used the jurisdictional term ''commercial motor vehicle.'' ''Motor carrier'' and ''motor private carrier'' were defined separately in those provisions of title 49 of the United States Code administered by the Interstate Commerce Commission; the definitions are now codified at 49 U.S.C. 13102. The FMCSRs have long treated owners and operators of CMVs as ''motor carriers'' (see 49 CFR 390.5). The regulatory text of 49 CFR part 385 would continue to use the term ''motor carrier'' as equivalent to ''owners and operators'' specified by amended section 31144.

Effect of Rating

Since 1991, motor carriers receiving an unsatisfactory safety rating from the FHWA have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of HM, in interstate commerce. Furthermore, those motor carriers could not be used by Federal agencies. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13, which implemented section 15(b) of the Motor Carrier Safety Act of 1990. The TEA–21 provision expands the same prohibition, under virtually identical conditions, to all other motor carriers, irrespective of their cargo, which are found by the FHWA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination.

Despite the change in the language, nothing in the amending provision would indicate any intention on the part of Congress to require the FHWA to change the effect of an unsatisfactory rating applied to a motor carrier of passengers or placardable HM. Although it extends the prohibitions to all other motor carriers, section 4009 does not require that another standard be applied. Consequently, the FHWA is proposing to require all other motor carriers with a proposed unsatisfactory safety rating to cease operations when that rating becomes final. As is already the case with passenger and HM carriers, these other motor carriers would be given an appropriate period of time within which to improve that proposed rating.

Proposed Ratings; Effective Date of Final Rating

One of the changes to 49 CFR part 385 made in the November 6, 1997, final rule was the adoption of a ''proposed'' safety rating. A motor carrier is informed of its proposed rating at the end of a compliance review. If the proposed rating is unsatisfactory, it becomes the final rating 45 days later (if improvements are not forthcoming), and the carrier must halt its transportation of passengers or HM on the 46th day. The 45-day period after the proposed safety rating is announced provides the motor carrier with an opportunity to assess its operations and request the FHWA to reconsider the rating either because (1) it believes the FHWA proposed an erroneous rating, or (2) the motor carrier has taken corrective actions so that its operations meet the safety standards and factors specified in § 385.9 of the FMCSRs.

The FHWA adopted ''proposed'' ratings in 1997, and is retaining them in this NPRM, in the interest of basic fairness to motor carriers. Section 15(b) of the MCSA of 1990 and section 4009 of TEA–21 both require carriers to cease interstate operations 45 or 60 days after receiving an unsatisfactory rating or a determination of unfitness. A final rating is public information which must be released under the Freedom of Information Act (FOIA), Public Law 89–487, 80 Stat. 250, as amended; in fact, the FHWA posts final ratings on its Safety and Fitness Electronic Records System (SAFER) web site [*http://www.safersys.org*] and makes them available through telephone inquiries to (800) 832–5660. An unsatisfactory rating can have an almost immediate impact on business once it becomes public, yet both the MCSA and TEA–21 provide carriers a substantial grace period after an unsatisfactory rating. In other words, the FOIA may defeat one of the essential elements of the 1990 and 1998 amendments by subjecting carriers to a serious, and potentially fatal, loss of business before they have had a chance to improve their safety posture. The FHWA believes the purposes of these statutes can best be reconciled by issuing ''proposed'' unsatisfactory and conditional safety ratings which are not releasable under the FOIA because they do not yet constitute the agency's final decision. The FHWA requests comment, however, on what harm would ensue if the ''proposed'' unsatisfactory rating became public before a final unsatisfactory rating were to be issued.

Under the rules proposed today, a motor carrier warned by the FHWA that its proposed rating is unsatisfactory would have an opportunity in the next 45 or 60 days to demonstrate its renewed commitment to safety and regulatory compliance, or to argue that the FHWA made a mistake in assigning that rating. A number of motor carriers have successfully used the 45-day grace period to improve their ratings since the 1997 rule went into effect. But if no such improvements are forthcoming, the carrier would be required to halt its CMV operations in interstate commerce the day after an unsatisfactory rating becomes final (i.e., on the 46th or 61st day after the carrier was notified of the proposed safety rating). The agency would then post the final rating to the SAFER web site and make it available by telephone. Although this procedure requires carriers to shut down one day, rather than 46 or 61 days, after the final rating of unsatisfactory, the FHWA believes the ''proposed'' safety rating followed by a 45- or 60-day grace period achieves the same purpose as, and is entirely consistent with, section 4009.

Subsection (c) of 49 U.S.C. 31144 also provides discretionary power to the FHWA to allow unsatisfactory motor carriers that do not transport passengers or HM to operate for an additional 60 days, if the agency determines the motor carrier is making a good faith effort to improve its safety fitness. As noted above, the FHWA would not make a final determination of unfitness in its initial notification—the final determination would occur at the end of the 45- or 60-day period. Reiterating its commitment to highway safety, and responding to another comment by the DOT OIG, the FHWA intends to continue to provide careful, timely, and effective safety oversight of changes made by these motor carriers as they attempt to improve their safety ratings within the first 60-day period, and, if needed, during the second 60-day period.

Section 31144(d) specifies the time limits for the FHWA to review motor carriers' compliance with regulatory provisions that contributed to the fitness determination. For motor carriers of passengers or HM, the review must be performed within 30 days of the carrier's request. For all other motor carriers, the FHWA must perform the review within 45 days of the carrier's request.

In the preamble to the August 16, 1991, interim final rule that implemented the provisions of the MCSA of 1990 (56 FR 40801, at 40802), the FHWA said it would ''make its determination expeditiously because the 'unsatisfactory' safety rating may well affect a motor carrier's ability to continue in business. In the event the FHWA is unable to make its determination within the 45-day period, the agency may conditionally suspend any 'unsatisfactory' safety rating and rescind any related administrative order for a period of up to 10 additional calendar days.'' The current regulation, at 49 CFR 385.17(d), continues to allow for this additional time: ''If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and a final determination cannot be made within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the Regional Director.'' The NPRM retains this provision (as § 385.17(f)) because there may be circumstances under which competing demands for FHWA staff time would make it impossible to complete a review within the time limit specified by the statute. The agency does not expect that to happen frequently, but it does not wish to penalize motor carriers for delays not of their own making. The extension would be allowed at the discretion of the Enforcement Program Manager in the FHWA Resource Center for the appropriate geographic area—the agency no longer has Regional offices. The list of Resource Centers would appear under § 390.27.

Other Rating Issues

The FHWA does not currently issue safety ratings to two categories of motor carriers of passengers: (1) Non-business private motor carriers of passengers, such as churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation. As to the first category, the FHWA does not believe that Congress intended the agency to include this group, because the occasional nature of the transportation these motor carriers provide does not readily lend itself to safety fitness evaluation. These motor carriers are not required to maintain most of the records otherwise mandated by the FMCSRs. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. The FHWA would continue its practice of not issuing a safety rating to this type of motor carrier.

The second category of passenger motor carrier is comprised mainly of limousine and van owners and operators. These entities are currently required to obtain operating authority from the FHWA, but are not subject to most provisions of the FMCSRs because their vehicles do not qualify as ''commercial motor vehicles'' under 49 CFR 390.5. However, section 4008 of TEA–21 changed part of the statutory definition of ''commercial motor vehicle'' to include those designed or used to transport ''more than 8 passengers (including the driver) for compensation'' (49 U.S.C. 31132(1)(B)). Motor carriers operating such vehicles would require safety fitness determinations. Most of the FMCSRs (except parts 382, 383, 387, and a few other requirements) became applicable to these smaller passenger vehicles on June 9, 1999. The FHWA is considering exempting for six months the operation of these small passenger-carrying vehicles from all of the FMCSRs, to allow time for the completion of a rulemaking on that issue.

Motor Carriers With Less Than Satisfactory Safety Ratings

In its April 26, 1999 audit of the FHWA's motor carrier safety program, the OIG recommended that the FHWA perform follow-up visits and monitoring of those motor carriers with a lower than satisfactory safety rating. The OIG recommended that these visits and monitoring take place at varying intervals to ensure that safety improvements are sustained, or if safety has deteriorated, that appropriate sanctions are invoked. The FHWA has made a practice of monitoring the safety performance of motor carriers under its regulatory jurisdiction, and to place special compliance program emphasis upon those with performance outcomes (such as accident rates and vehicles and drivers out-of-service rates that exceed thresholds set according to the type and volume of the operation) that indicate a potential safety problem. The agency will continue to devote its resources to improve highway safety, and will continue to work with its State partners toward this goal.

Docket Comments Concerning Section 4009

A few commenters to the July 20, 1998, ANPRM concerning safety fitness procedures addressed issues related to section 4009 of TEA–21. We summarize their comments here.

The Oregon Department of Transportation, Motor Carrier Transportation Branch (Oregon), stated that motor carriers that pose an imminent danger to the public or themselves should be prohibited from operating. Oregon believes that 49 CFR 385.13 adequately addresses unfit motor carriers of HM and passengers, and that the prohibition that section 4009 would impose on other motor carriers should be implemented by including additional performance-based data in the rating methodology. That data might include driver citations, driver out-of-service violations, and vehicle size and weight violations.

FHWA response. The FHWA will continue to use the authority in 49 U.S.C. 521(b)(5)(A) to deal with imminent hazards. (The implementing regulation is codified at 49 CFR 386.72, and is not included in today's rulemaking activity.) That authority is limited, however, to extreme cases. The FHWA agrees that performance-based information, where available, would be valuable in making safety fitness determinations. We will address this issue in future rulemaking.

The Transportation Lawyers Association's Committee on Federal Agency Practice criticized what it considered the FHWA's ''repetitive rulemakings on the same issue without new rules being developed.'' It also highlighted concerns with due process because safety ratings entail severe economic ''punishment'' and the data upon which ratings are based are allegedly so erroneous as to be meaningless.

FHWA response. The FHWA described in detail its rulemaking actions, and their background, in the July 20, 1998, ANPRM (63 FR 38788). The safety rating process incorporates due-process protections in §§ 385.15 and 385.17. The agency believes these have proven to be adequate. Finally, the FHWA is continually updating records and improving the quality and effectiveness of the information in its Motor Carrier Management Information System (MCMIS) database. The agency continues to receive more timely and better quality data from its field staff and its State partners.

The FHWA is continuing to assess its methods for assigning safety ratings to motor carriers. The agency recognizes that the consequences of an *unsatisfactory* safety rating are extremely serious for motor carriers that cannot or will not improve their commitment to safety. We acknowledge the need to exercise great care in reviewing information that could result in an *unsatisfactory* rating, but the statutory mandate is clear.

The American Trucking Associations (ATA) stated that it supported Section 4009 of TEA–21, but went on to say:

We take issue, however, with how the agency has characterized the Congressional mandate. In the subject notice, the agency states that the prohibition on transportation should apply to carriers with unsatisfactory ratings. In fact, the Act did not use the term ''unsatisfactory rating'' but instead deliberately used the term ''not fit to operate.'' * * * The industry believes this distinction is an important one. As stated earlier, unsatisfactory compliance does not always result in unsafe performance. In fact, some carriers who have received unsatisfactory safety ratings under the current system have acceptable accident rates. Instead, the term ''not fit to operate'' should be reserved for carriers whose performance is so poor that to allow them to continue to operate would be a certain and substantial threat to highway safety. Specifically, carriers with high accident rates who have failed to act on the opportunity to improve should be placed in this category.

FHWA response. As discussed above, the FHWA believes this proposed rule is consistent with the statutory mandate. Congress used the term ''unsatisfactory'' in the 1990 MCSA, and gave no indication that it intended to require a different result in TEA–21. Even the 45-day grace period for passenger and HM carriers was retained. Therefore, the change in wording, from ''unsatisfactory'' in section 5113 to ''not fit'' in section 31144, does not support the interpretation urged on the agency by the ATA.

The National Tank Truck Carriers, Inc. (NTTC) believes the safety rating system's fundamental purpose is to provide an alert to the public, including shippers, of the shortcomings of unsafe motor carriers. The NTTC also believes the enforcement community should give priority attention to unsafe motor carriers: the more the rating system ''singles out'' the unsafe carrier, the more responsive it will be to congressional intent.

Advocates for Highway and Auto Safety criticized what it considers the FHWA's inadequate stewardship of motor carrier safety, but did not offer any comment on the contents of section 4009.

FHWA response. In TEA–21, Congress provided the agency with specific direction to prohibit all unfit motor carriers—not only passenger and HM carriers—from operating in interstate commerce. As indicated above, there is nothing in the statute or legislative history of this provision which suggests that Congress intended to require the FHWA to adopt a standard for evaluating ''fitness'' that differs from the current safety rating system in Part 385.

The Department of California Highway Patrol (CHP) expressed a concern with the 45-day period between a motor carrier's receipt of the FHWA's proposed safety rating and the time the rating becomes final. The CHP believes that allowing a motor carrier to continue to operate would appear to defeat the purpose of the ratings, and also that a motor carrier's corrective action taken during the 45-day period could cause the FHWA's intended rating downgrade to become moot.

FHWA response. The CHP appears to be concerned about the regulatory grace period that the FHWA addressed in the November 6, 1997, final rule (62 FR 60035, at 60039). The Motor Carrier Safety Act of 1990 specified a 45 day period before an unsatisfactory motor carrier was required to cease passenger or HM operations. Section 4009 of TEA–21 also requires this time period. The previous regulations, as well as those proposed today, are consistent with the purpose of the statutes. As explained above, the FHWA believes motor carriers should not be penalized by having their proposed unsatisfactory ratings released during the time period they are given to improve their proposed ratings.

Consolidated Safety Services, Inc. (CSS), a safety services provider, expressed some reservation about the practical effects of the statute's prohibitions. The CSS described its work for two Federal agency clients, the Military Traffic Management Command (MTMC) and the U.S. Postal Service (USPS). According to CSS, the MTMC requires motor carriers to have a DOT satisfactory safety rating in order to be considered for a contract to provide passenger transportation. The USPS, on the other hand, refuses to allow unsatisfactory-rated motor carriers to transport mail, but motor carriers rated conditional, as well as unrated carriers, are eligible. Because of the FHWA's inability (due to resource constraints) to rate all the motor carriers the USPS had requested to be rated, CSS developed a ''DOT Equivalency Inspection Program'' for the USPS. With the support of the National Star Route Mail Contractors Association, CSS inspected over 100 mail carriers and advised the USPS that ''over 80 percent of those contracted postal carriers inspected could not meet the FHWA's minimums.'' According to CSS, the USPS reverted to its original position, excluding only those motor carriers specifically required by statute to be excluded (i.e., those with unsatisfactory ratings from the FHWA).

FHWA response. The USPS did not provide comments to this docket, and since CSS did not describe the criteria it used to assess the safety status of the USPS contract motor carriers, it is unclear whether the 80 percent that failed the CSS program would also be rated unsatisfactory under the FHWA's standards.

The Canadian Council of Motor Transport Administrators commented that the TEA–21 prohibition against an unfit motor carrier's transportation of any property would make the U.S. approach similar to that of Canada.

The Public Utilities Commission of Ohio (PUCO) expressed concern that the FHWA had not prepared cost-benefit analyses for the ANPRM because the FHWA had maintained that the issues raised in the ANPRM did not constitute ''significant regulatory action.'' The PUCO's comments reflected its concern about potentially extensive changes to the safety fitness program and the current and future role of States in conducting motor carrier safety compliance reviews.

FHWA response. The FHWA used the ANPRM to gather information as a prelude to a rulemaking. The ANPRM did not propose specific new or revised regulations, therefore the FHWA did not have the basis to perform detailed regulatory analyses at that time.

Federal Government Agency Use of Unsatisfactory Rated Motor Carriers

Since 1991, any department, agency, or instrumentality of the United States Government has been prohibited from using a passenger or HM motor carrier with an unsatisfactory safety rating. Section 4009 of TEA–21 extends this prohibition to cover all motor carriers found to be unfit. As written, the prohibition applies to the Federal agency and not to the motor carrier.

The FHWA would continue to advise a motor carrier of its proposed safety rating as soon as possible after the FHWA's compliance review, but not later than 30 days afterwards. At the end of the 45- or 60-day period (or longer, if extended), the proposed rating would become the motor carrier's final safety rating if the FHWA has no basis to change it. On the effective date of a final unsatisfactory safety rating, Federal government agencies will be precluded from using, or continuing to use, these motor carriers' transportation services.

Changes to FHWA Organizational Structure

The FHWA has recently undergone a significant reorganization of its field and headquarters offices. The nine FHWA Regions have been eliminated and four Resource Centers have been established that provide support to the FHWA Division offices located in each State.

In headquarters, many of the functions of the former Office of Safety and Technology and Office of Field Operations under the Associate Administrator for Motor Carriers have been combined into a new Office of Motor Carrier Enforcement. The decision regarding safety fitness has been elevated to the Program Manager for Motor Carrier and Highway Safety, the senior manager of this operating unit of the FHWA (the agency no longer uses the title Associate Administrator). We have revised the appropriate sections of part 385 and section 390.27 to reflect these changes in organizational structure and titles.

Rulemaking Analyses and Notices

The proposed changes to 49 CFR part 385 are a straightforward implementation of the amendments to 49 U.S.C. 31144 made by section 4009 of TEA–21. The regulatory changes, like the statutory amendments, simply expand a prohibition on interstate operations, which had previously applied only to HM and passenger carriers, to all other motor carriers. Section 15(b) of the MCSA of 1990 added to the FHWA's existing safety rating a mandate to require that passenger and HM carriers cease conducting those operations in interstate commerce 45 days after they received an unsatisfactory rating. Section 4009 of TEA–21 clearly authorizes the FHWA to take the same course in shutting down all other carriers 60 days after they receive an unsatisfactory rating. The agency is undertaking a separate rulemaking action (see RIN 2125–AE37) to explore means to improve its safety fitness determination process in relation to its overall safety compliance and enforcement program, as well as the application of those determinations within the truck and bus industries.

The proposed rule would only apply prospectively. Motor carriers which are currently rated unsatisfactory, which do not transport passengers or HM, would not be affected unless the FHWA issued an unsatisfactory safety rating in a follow-up compliance review conducted on or after the rule's effective date. For the non-passenger and non-HM motor carriers that receive a notice of a proposed unsatisfactory safety rating on or after the effective date of a final rule, the regulation would provide 60 days, with the possibility of an additional 60 days, to challenge the rating, or to demonstrate improvement in their safety practices.

The FHWA will carefully consider comments it receives to evaluate whether any changes to this proposal are required. Because U.S. Government agencies would be precluded from contracting with unfit motor carriers for non-HM freight transportation service, we are working informally with the federal agencies that utilize substantial amounts of contracted transportation (the United States Postal Service, the General Services Administration, and the Military Traffic Management Command) to advise them concerning this proposed rulemaking. The FHWA particularly invites motor carriers who provide this transportation to government agencies to comment on this proposed rulemaking.

All comments will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of the substantial public interest in the provision of safe interstate motor freight and passenger transportation. This NPRM was reviewed by the Office of Management and Budget. This proposed rule would require any motor carrier in interstate commerce that the FHWA rates unsatisfactory to cease providing CMV transportation after a grace period of 45 days (for HM and passenger operations) or 60 days (for all other motor carriers). A motor carrier would be allowed to commence those operations again only if the FHWA determines its safety rating is no longer unsatisfactory. Although these requirements have been in place since 1991 for passenger and HM motor carriers, this is the first time they would be applied to other motor carriers.

Motor carriers of passengers and of placardable quantities of HM would not be subject to new sanctions for noncompliance as a result of this regulatory action. In fact, under the new regulations, the FHWA would have to respond to any requests for a follow-up review of an unsatisfactory safety rating within 30 days—the current regulations require this to be accomplished within 45 days. This revision is required by 49 U.S.C. 31144(d)(2) and (3).

As of December 31, 1998, the FHWA's MCMIS listed 477,486 motor carriers as active. Summary statistics of these motor carriers follow:

Motor carriers of passengers: 10,728 in MCMIS 3,242 rated (23 percent), 33 rated unsatisfactory (1 percent of rated passenger carriers, 0.24 percent of all passenger carriers).

Motor carriers of HM: 41,723 in MCMIS 23,447 rated (56 percent), 565 rated unsatisfactory (2.4 percent of rated HM carriers, 1.4 percent of all HM carriers).

Motor carriers of property, non-HM: 421,793 in MCMIS 102,517 rated (24 percent), 8,999 rated unsatisfactory (8.8 percent of rated carriers, 2 percent of all motor carriers of non-HM property).

The number of motor carriers with unsatisfactory safety ratings is a small fraction of all the rated motor carriers in MCMIS, and a minute fraction of the motor carriers of passengers and of HM. Although a larger number of motor carriers of non-HM freight in MCMIS have unsatisfactory safety ratings, the FHWA believes this is the result of two factors. First, until this time, an unsatisfactory rating did not prohibit a non-HM-freight motor carrier from operating in interstate commerce. Second, many motor carriers in MCMIS may have ceased operating in interstate commerce or are no longer in business. Since there is no requirement for motor carriers to notify the FHWA of a change in status, they continue to be counted as ''active'' interstate motor carriers. The MCMIS contains a motor carrier's last rating of record, and, unless the motor carrier requested the FHWA to reassess its safety posture with a view toward revising the safety rating, this rating remains on file.

The following summary gives a recent history of follow-up compliance reviews (CRs) on motor carriers performed by the FHWA in fiscal year 1998. The columns represent the number of power units operated by the motor carrier.

TABLE 1.—FOLLOW UP COMPLIANCE REVIEWS, FISCAL YEAR 1998 (10/1/1997–09/30/1998)

	1–6	7–20	21–100	101–500	501–1000	1001+	Total	Percent
Property carriers:								
Start Unsat	113	101	53	5	0	0	272	100.0
End Sat	40	32	13	1	0	0	86	31.6
End Cond	33	33	19	2	0	0	87	32.0
End Unsat	19	22	15	1	0	0	57	21.0
End Not Rated	21	14	6	1	0	0	42	15.4
HM carriers:								
Start Unsat	22	59	51	17	1	1	151	100.0
End Sat	12	23	22	7	0	0	64	42.4
End Cond	7	26	23	8	1	1	66	43.7
End Unsat	1	10	6	2	0	0	19	12.6
End Not Rated	2	0	0	0	0	0	2	1.3
Pass. carriers:								
Start Unsat	19	12	3	0	2	0	36	100.0
End Sat	17	7	2	0	0	0	26	72.2
End Cond	2	5	1	0	1	0	9	25.0
End Unsat	0	0	0	0	1	0	1	2.8
End Not Rated	0	0	0	0	0	0	0	0.0

For example, in fiscal year 1998, 272 re-rated motor carriers of property (non-HM) had received an initial unsatisfactory safety rating. All but 57 of them received a conditional or satisfactory safety rating from the FHWA resulting from follow-up reviews performed during the year; the 42 motor carriers that ended the year in the ''not rated'' category were no longer operating in interstate commerce. Supplemental Item 1 of this docket contains summary statistics and detailed data from calendar years 1994–1998 for passenger, HM, and non-HM property motor carriers.

The FHWA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Based upon the statistics on follow-up compliance reviews conducted during calendar years 1994 through 1998, the FHWA expects that between 50 and 100 motor carriers might not improve an initial proposed unsatisfactory safety rating. These motor carriers would be required to cease their operations in interstate commerce until they could demonstrate to the FHWA that they had improved the safety of their operations. The vast majority of motor carriers with unsatisfactory safety ratings have been able to achieve improved ratings during follow-up CRs performed by the FHWA and its State partners. The very few motor carriers that did not achieve improved ratings represent the very few that have elected not to devote resources to safety and regulatory compliance, both of which should have been cornerstones of any responsible operation. However, the FHWA is unable to determine the precise impact this rulemaking would have on non-HM interstate motor carriers of property. As of late 1998, the FHWA has provided safety ratings to approximately 25 percent of those motor carriers identified in the MCMIS as active. The FHWA is interested in any information that will assist the agency in determining the economic impact of this proposed rule on this portion of the motor carrier industry and any additional impacts on its customers.

With respect to motor carriers of non-HM freight, a small number may be adversely affected by this regulatory action. A motor carrier of non-HM freight that receives a notice of a proposed unsatisfactory safety rating would be prohibited from providing transportation in interstate commerce starting 61 days from the date of that notice, unless the FHWA revises that rating as the result of (1) an administrative review or (2) a demonstration by the motor carrier that it has taken corrective action. If the FHWA determines a motor carrier is making a good faith effort to improve its safety posture, the agency could extend the initial 60-day period for up to 60 additional days.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FHWA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The agency believes that any potential adverse economic impact to those relatively few motor carriers who are unwilling or unable to demonstrate an improvement in the safety of their operations within the 60 to 120 day period specified in TEA–21 is entirely consistent with the intent of the statute. The FHWA believes the traveling public would derive a safety benefit from the removal from the Nation's highways of CMVs operated in interstate commerce by those few motor carriers found to be unfit to operate them safely. In addition, shippers of non-HM freight would derive direct and indirect economic gains through the improved safety and corresponding efficiency of their commercial motor freight transportation.

This proposed rule would only affect the operations of the small number of motor carriers determined to be unfit to operate CMVs based on the frequency and severity of their safety violations, poor outcomes of roadside inspections, and accident experience. The number of motor carriers of non-HM freight that do not improve their safety rating from unsatisfactory is expected to continue to be small—fewer than 100 motor carriers per year. The FHWA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that ceases operations as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to force unfit motor carriers to improve their operational safety. There are no new costs associated with this rulemaking and the overall adverse economic effects would be minimal.

This rulemaking, if adopted, would allow the FHWA to require that those few motor carriers of non-HM freight that cannot or will not improve their safety performance above the level that produced an unsatisfactory safety rating, to cease their operations in interstate commerce. The FHWA believes that removing these motor carriers from the public highways will provide a very important, although unquantifiable, safety benefit. The agency believes these motor carriers pose a significant safety risk to the traveling public because of their demonstrated refusal, or inability, to comply with the FMCSRs. This proposed rule would provide the FHWA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. It would, however, implement a specific congressional directive prohibiting Federal agencies from using any motor carrier with an unsatisfactory safety rating to provide ''any transportation service.'' Therefore, all Federal agencies that contract for motor carrier passenger or freight transportation in CMVs must review the safety ratings of new and prospective motor carrier contractors. The FHWA believes that the United States Postal Service, the General Services Administration, and the Military Traffic Management Command are the primary agencies affected; the FHWA is working with these agencies to solicit their views on this rulemaking action.

The FHWA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed rulemaking on small entities. The motor carriers to be economically impacted by this rulemaking would be those who are rated unsatisfactory and fail to take appropriate actions to improve their rating. As of March, 1999, some 79 percent of the 483,385 active motor carriers in MCMIS were in the ''very small'' or ''small'' category (less than 21 power units). The FHWA's statistical information contained in MCMIS indicates that relatively few small motor carriers of passengers or HM have received unsatisfactory safety ratings since 1994, the earliest date for which information is readily available, and fewer still did not improve their safety ratings based upon the FHWA's follow-up compliance reviews.

The following tables show statistics for follow-up compliance reviews of motor carriers of property (non-HM) for calendar years 1994 through 1998.

TABLE 2.—MOTOR CARRIERS OF PROPERTY INITIALLY RATED UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	475	293	89	36	19	7	919
CY 95	196	204	109	35	15	2	561
CY 96	158	208	102	30	11	6	515
CY 97	94	168	54	16	9	0	341
CY 98	81	152	46	7	4	0	290

TABLE 3: MOTOR CARRIERS OF PROPERTY STARTING AND ENDING UNSATISFACTORY, BY NUMBER OF DRIVERS

	1–4	5–19	20–49	50–99	100–299	300+	Total
CY 94	37	41	17	5	3	0	103
CY 95	23	24	21	9	1	0	78
CY 96	17	37	14	3	1	0	72
CY 97	5	7	3	2	0	0	17
CY 98	15	28	9	3	1	0	56

Between 81 and 475 motor carriers of property that employed between 1 and 4 drivers began a calendar year with an unsatisfactory safety rating. By the end of the calendar year, all but between 5 and 37 had improved their safety rating. During that same period, between 152 and 293 motor carriers of property that employed between 5 and 19 drivers began the calendar year with an unsatisfactory safety rating. All but between 7 and 37 had improved their safety rating by the end of the year. As long as these motor carriers held (or were able to improve) their safety ratings to conditional or satisfactory, § 385.13 of this proposed rule would not have affected their ability to operate in interstate commerce. There is no reason to believe that this proposed regulatory action would increase those impacts.

Therefore, the FHWA certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, ''Protection of Children from Environmental Health

Risks and Safety Risks.'' This proposed rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would implement a statutory mandate to prohibit interstate motor carrier operations found to be unsafe and therefore unfit. Motor carriers can avoid all of the implications of an unsatisfactory safety rating simply by complying with the FMCSRs. Furthermore, motor carriers with a proposed unsatisfactory safety rating would have at least 45 or 60 days, depending on the type of operation, to correct deficiencies identified by the FHWA before halting operations in interstate commerce. Finally, even if a motor carrier were to suspend its operations, it can resume operations by correcting its deficiencies, coming into compliance with the FMCSRs, and demonstrating these improvements to the FHWA. The FHWA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The FHWA has determined this proposed rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although section 4009 of TEA–21 requires the FHWA to revise part 385 of the FMCSRs, States are not required to adopt part 385 as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) grants. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 6, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, parts 385 and 390 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 31136, 31144, and 31502; and 49 CFR 1.48.

2. Revise § 385.1 to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes the FHWA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a CMV.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers and motor carriers conducting for-hire operations of passenger CMVs with a capacity of 8–15 persons, including the driver.

3. Revise § 385.11 to read as follows:

§ 385.11 Notification of safety fitness determination.

(a) The FHWA will provide a motor carrier written notice of any rating resulting from a safety fitness review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FHWA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is ''satisfactory'' or improves a previous ''unsatisfactory'' safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of ''unsatisfactory'' is a notice to the motor carrier that the FHWA has made a preliminary determination that the motor carrier is ''unfit'' to continue operating in interstate commerce, and that the prohibitions in § 385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FHWA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in § 385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in § 385.17.

4. Revise § 385.13 to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) A motor carrier rated ''unsatisfactory'' is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FHWA on the internet at http://www.safersys.org, or by telephone, (800) 832–5660.

(1) Motor carriers transporting hazardous materials in quantities

requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV beginning on the 46th day after receiving the FHWA's notice of proposed ''unsatisfactory'' rating.

(2) All other motor carriers rated after [date 30 days after the date of publication of the final regulations in the **Federal Register**] are prohibited from operating a CMV beginning on the 61st day after the motor carrier receives the FHWA's notice of proposed ''unsatisfactory'' rating. If the FHWA determines the motor carrier is making a good-faith effort to improve its safety fitness, the FHWA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds a ''unsatisfactory'' rating to transport passengers or to transport hazardous materials in quantities requiring placarding in a CMV.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an ''unsatisfactory'' rating which became effective on or after [date 30 days after the date of publication of the final regulations in the **Federal Register**].

5. Revise § 385.15 to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request the FHWA to conduct an administrative review if it believes the FHWA has committed an error in assigning its proposed or final safety rating.

(b) The motor carrier's request must explain the error it believes the FHWA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the FHWA, Program Manager, Office of Motor Carrier and Highway Safety, 400 Seventh Street, SW., Washington DC 20590.

(1) If a motor carrier has received a notice of a proposed ''unsatisfactory'' rating, it should submit its request within 15 days from the date of the notice.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed or final safety rating issued by the FHWA under the provisions of § 385.11, or within 90 days after denial of a request for a change in rating under § 385.17(i).

(d) The FHWA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FHWA may dismiss its request for review.

(e) The FHWA will notify the motor carrier in writing of its decision following the administrative review. The FHWA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final ''unsatisfactory'' safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final ''unsatisfactory'' safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request improvement in the safety rating under the provisions of § 385.17.

6. Revise § 385.17 to read as follows:

§ 385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of ''conditional'' or ''unsatisfactory'' may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FHWA Resource Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Resource Centers are listed in § 390.27.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standards and factors specified in §§ 385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FHWA to consider.

(d) The FHWA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FHWA will perform reviews of requests made by motor carriers with a proposed or final ''unsatisfactory'' safety rating in the following time periods after the motor carrier's request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials. If the motor carrier has submitted evidence that corrective actions have been taken pursuant to this section and the FHWA cannot make a final determination within the 45-day period, the period before the proposed safety rating becomes effective may be extended for up to 10 days at the discretion of the FHWA.

(g) The FHWA may allow a motor carrier with a proposed rating of ''unsatisfactory'' (except those transporting passengers in CMVs or placardable quantities of hazardous materials) to continue to operate in interstate commerce for up to 60 days beyond the 60 days specified in the proposed rating, if the FHWA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin the 61st day after the date of the proposed ''unsatisfactory'' rating.

(h) If the FHWA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FHWA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standards and factors specified in §§ 385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of § 385.15. The motor carrier must make the request within 45 days of the denial of the request for rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

7. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204 of Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

8. Revise § 390.27 to read as follows:

§ 390.27 Locations of motor carrier and highway safety resource centers.

The following table sets forth the locations and territories for the four resource centers that are established to provide support to the FHWA division offices located in each State:

Resource center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, WV.	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX	61 Forsyth Street, SW, Suite 17T75, Atlanta, GA 30303–3104.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NV, OR, SD, UT, WA, WY.	201 Mission Street, San Francisco, CA 94105.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Carex lutea (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations in Pender and Onslow counties, North Carolina. *C. lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This proposal, if made final, will extend the protection of the Act to *C. lutea*. We are seeking data and comments from the public.

DATES: Send your comments to reach us on or before October 15, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive public hearing requests by September 30, 1999.

ADDRESSES: Send comments, materials, and requests for a public hearing concerning this proposal to the State Supervisor, Asheville Field Office, US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora A. Murdock at the above address (828/258–3939, extension 231).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stem) may reach one meter (3 feet) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (10 inches (in)) long, while those of the vegetative shoots reach a length of 65 cm (25 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.75 to 1.5 in) long, 1.5 to 2.5 millimeters (mm) (0.05 to 0.10 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.5 to 2 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.5 in) long and 1 cm (0.5 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.75 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.75 to 7 in). The inflated perigynia (sac which encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (.16 to .20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *C. lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.*, in 1994 described *Carex lutea* from specimens collected in 1992 by R. J. LeBlond, B. A. Sorrie, A. A. Reznicek, and S. A. Reznicek in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of concern to us. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow counties, North Carolina. As stated by LeBlond (1996):

> . . . localities where *Carex lutea* have been found are ecologically highly unusual . . . The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley

province of Georgia and Alabama; and pinelands of the Carolinas and southern New Jersey.

These rare savannas, underlain by calcareous deposits, support unusual assemblages of plants, including several species known from less than a dozen sites worldwide (Schafale 1994). LeBlond (1996) characterizes these habitats as ''. . . a small archipelago of phytogeographic islands . . .'' that form a refuge for these rare and unique species. Despite extensive searches of the Gulf Coast in northern Florida and southern Alabama, and Atlantic Coast sites in South Carolina, Georgia, and Florida, no other populations of *Carex lutea* were found outside the North Carolina coastal plain. The species appears to be a very rare, narrowly restricted endemic to an area within a 2-mile radius of the Onslow/Pender County line in southeastern North Carolina (LeBlond 1996). It is listed as endangered by the State of North Carolina (Amoroso and Weakley 1995; M. Boyer, North Carolina Department of Agriculture, personal communication, 1998).

Previous Federal Activities

Federal government actions on this species have only recently begun, since the species was unknown to science before 1991 and its official description was not published until 1994. In 1995, we funded a survey to determine the status of *Carex lutea* throughout its known and potential range; we accepted the final report on this survey in 1997. A 1998 status report confirmed the species' precarious status (LeBlond 1998). We elevated *C. lutea* to candidate status (species for which we have sufficient information on status and threats to propose the taxon for listing as endangered or threatened) on October 16, 1998.

On May 8, 1998 (63 FR 25502), we published Listing Priority Guidance for Fiscal Years 1998 and 1999. The guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal lists are found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Carex lutea* (golden sedge) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven of the eight known populations of *Carex lutea* are on privately owned land and are potentially threatened with the destruction or adverse modification of their habitat from residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. The eighth population, on land now owned by the North Carolina Department of Transportation (NCDOT), was severely disturbed in the 1980s by clearcutting, ditching, and draining prior to NCDOT ownership. This site has been purchased by the NCDOT as a mitigation site and is currently under study for the restoration of natural communities and protection and enhancement of rare species populations. At least some of the original *C. lutea* plants survived the previous damage to the site, and the remaining population appears stable.

As described in the ''Background'' section, the habitat upon which this species depends is extremely rare. Most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters. Three of the sites have populations composed of fewer than 50 individuals. Although little is known about natural population fluctuations in this species, severe population declines (exceeding 83 percent) were noted between 1992 and 1996 at three of the eight remaining sites. The exact causes for these losses are unknown. One population is located on a roadside, and another is on a power line right-of-way, where they are exceptionally vulnerable to destruction from highway expansion or improvement or herbicide application. All the known sites have been damaged to some degree in the past by ditching and drainage, mining, logging, bulldozing, and/or road building. Because the species was only recently discovered, it is impossible to know exactly what its historic distribution and population numbers might have been. However, LeBlond (1996) states: ''It is probable that drainage ditches (that lower the water table over a large area) have reduced, perhaps greatly, the amount of suitable habitat available for *Carex lutea* and other rare species at these sites.''

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial trade in *C. lutea* at this time. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity. Most populations are too small to support even the limited collection of plants for scientific or other purposes.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Carex lutea* is listed by the State of North Carolina as endangered. As such, it is afforded legal protection within the State by North Carolina General Statutes, § 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for the monitoring and management of State-listed species and prohibit the taking of plants without a permit and written permission from the landowner. However, State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Two of the sites are somewhat protected by registry agreements between the landowner and the North Carolina Natural Heritage Program. These agreements are strictly voluntary, however, and may be canceled by the landowner at any time. Part of another population is owned by The Nature Conservancy; however, this site is next to a quarry, and the rest of the population is vulnerable to destruction.

Section 404 of the Clean Water Act represents the primary Federal law that may provide some regulation of the species' wetland habitats. However, the Clean Water Act by itself does not provide adequate protection for the species. Although the objective of the Clean Water Act is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (33 U.S.C. § 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, the Corps may issue nationwide permits for certain activities that are considered to have minimal impacts. However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. The Corps may also authorize activities by an individual or regional general permit when the project does not qualify for authorization under a nationwide permit. These projects include those that would result in more than minimal adverse environmental effects, either individually or cumulatively, and are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as *Carex lutea* may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the ''Background'' section of this proposed rule, many remaining populations are small in numbers of individuals and in area covered by the plants. This may suggest low genetic variability within populations, making it more important to maintain as much habitat and as many remaining colonies as possible.

Little is known about the life history of this species or about its specific environmental requirements. However, its apparent restriction to wet pine savannas is a strong indication that it is adapted to the pyric (associated with burning) and hydrological conditions associated with this community type. Such habitats were historically exposed to wildfires approximately every 3 to 5 years, usually during the growing season, which maintained the open habitats favored by *Carex lutea* and dozens of other fire-adapted species. During winter and spring, the soils where *C. lutea* grows are often shallowly flooded. At other times of the year these sites are very wet to saturated. Such high water tables also serve to control woody growth in undisturbed savanna habitats. However, without regular fire, which has been intensively suppressed on the Atlantic coastal plain for half a century, and with the lowering of water tables due to ditching, the open savannas are rapidly changing to dense thickets dominated by the trees and shrubs of the adjacent uplands. As a result, the extraordinary plant diversity characteristic of the savannas is being eliminated, and species such as *C. lutea* are disappearing from the landscape. Even where such habitat is owned by an organization that is able to manage the land with prescribed fire, like The Nature Conservancy, increasingly restrictive smoke management regulations make burning very difficult.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, the preferred action is to list *Carex lutea* as an endangered species. Endangered status is more appropriate than threatened status because of the following factors: this species occurs in only 2 counties; only 8 populations survive, all of which have already been damaged to some degree; most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters; three of the remaining populations are composed of fewer than 50 individuals; there are documented severe population declines (exceeding 83 percent) between 1992 and 1996 at three of the eight remaining sites; and all of the remaining populations are currently threatened by fire suppression, highway expansion, right-of-way management with herbicides, and drainage ditching.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate any critical habitat at the time the species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat for *Carex lutea* is not prudent because such designation would not be beneficial to the species.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. None of the known populations of *Carex lutea* occur on Federal land. However, Federal involvement with this species may occur through the use of Federal funding for power line construction, maintenance, and improvement; highway construction, maintanance and improvement; drainage alterations; and permits for mineral exploration and mining on non-Federal lands. The use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2), whether or not critical habitat was designated. The precarious status of *C. lutea* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. Thus, the only potential benefit that would result from critical habitat designation would be notification to Federal, State and local government agencies and private landowners. However, during the listing process, and after a species is listed, we conduct public outreach in affected local communities and with government agencies. All involved parties and landowners are aware of the location and importance of protecting this species' habitat. For these reasons, we believe that designation of currently occupied habitat of this species as critical habitat would not result in any additional benefit to the species and that such designation is not prudent.

Because this species occupies an extremely rare habitat type, little of which remains in an unaltered, functional state, we do not expect that reintroduction to currently unoccupied habitat is essential for recovery efforts. Therefore, we believe that designation of currently unoccupied habitat of this species as critical habitat would not result in any additional benefit to the species and, therefore, such designation is not prudent.

Most populations of this species are small, and the loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking without a permit is prohibited by the Act from locations under Federal jurisdiction; however, none of the known populations are located on Federal land. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species to collection, but would not increase its protection under the Act. The contractor we hired to conduct the rangewide status survey declined to include directions to the occupied sites in his report, stating: ''Due to the extreme rarity of *Carex lutea* and its vulnerability to extinction, a description of site boundaries or precise directions to population micro sites cannot be provided here'' (LeBlond 1996). The owners and managers of all the known populations of *C. lutea* have been made aware of the plant's location and how important it is to protect the plant and its habitat. Since no additional benefits would result from designation of critical habitat, and there are some risks associated with potential collection, we conclude that it is not prudent to designate critical habitat for *C. lutea*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could impact *Carex lutea* and its habitat in the future include, but are not limited to, the following: power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. We will work with the involved agencies to secure protection and proper management of *C. lutea* while accommodating agency activities to the extent possible.

If the species is added to the Federal List of Endangered and Threatened Wildlife and Plants, additional protection from taking will be provided when the taking is in violation of any State law, including State trespass laws. It would also provide protection from inappropriate commercial trade and encourage active management for *Carex lutea*. Specifically, the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. You may request copies of the regulations on plants from and direct inquiries about prohibitions and permits to the US Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia (telephone 404/679–7313).

It is our policy, published on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The eight remaining populations of *Carex lutea* occur on non-Federal land. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., wetland modification; power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any reasonable and prudent measures given by us according to section 7 of the Act.

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(3) Normal landscape activities around your own personal residence.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law. North Carolina prohibits the intrastate trade and take of *C. lutea* without a State permit and written permission from the landowner.

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In particular, we are seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Carex lutea*;

(2) The location of any additional populations of *Carex lutea* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Carex lutea*.

We will consider your comments and any additional information received on this species when making a final determination regarding this proposal. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the State Supervisor (see ADDRESSES section).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the ''Supplementary Information'' section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

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Schafale, M. 1994. Inventory of longleaf pine natural communities in North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Schafale, M., and A. Weakley. 1990. Classification of the natural communities of North Carolina (third approximation). Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Author

The primary author of this document is Ms. Nora A. Murdock (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Carex lutea	Golden sedge	U.S.A. (NC)	Cyperaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 12, 1999.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–20964 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 080499B]

Environmental Impact Statement (EIS) for the Proposed Fishery Management Plan (FMP) for the Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (Coral Reef Ecosystem FMP); EIS for the FMP for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region; (Bottomfish and Seamount Groundfish Fisheries FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare EISs; request for comments; notice of scoping meeting.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem FMP, and an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. The Western Pacific Fishery Management Council (Council) will hold a public scoping hearing in American Samoa on management alternatives to be analyzed under both EISs.

DATES: Written comments on the intent to prepare the EISs will be accepted on or before August 26, 1999. A public scoping meeting is scheduled for August 19, 1999.

ADDRESSES: Written comments on the intent to prepare the EISs or other aspects of the scoping documents, which contain suggested alternatives and potential impacts should be sent to and copies of the scoping documents are available from Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, National Marine Fisheries Service, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814.

The following location and time have been set for the scoping meeting: American Samoa, August 19, 1999, 3–5 p.m., Conference Room, Division of Marine and Wildlife Resources, Pago Pago, AS. Phone contact 684–633–4456 for information. Subsequent public scoping meetings are tentatively planned for Hawaii (details regarding times and locations will follow in a separate **Federal Register** announcement).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, at 808–522–8220.

SUPPLEMENTARY INFORMATION: A summary of the Coral Reef Ecosystem FMP will be presented including initial recommendations for management action, as described here. Comments will be solicited from the public on these and any other management alternatives the public cares to offer.

Management measures that might be adopted in the Coral Reef Ecosystem FMP include permit and reporting requirements for non-subsistence harvest of coral reef resources, marine protected areas to ensure greater conservation and management to special locations, allowable gear types to harvest coral reef resources in the U.S. exclusive economic zone (EEZ), prohibition on use of gear in ways destructive to habitat, and a framework management process to add future new measures. The FMP would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional measure, still under consideration for possible inclusion, is a ban on the possession or collection, for commercial purposes, of wild ''live rock'' and coral (other than coral covered by the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region). The collection of live rock or coral for scientific and research purposes and the collection of small amounts of live coral as brood-stock for captive breeding/aquaculture would be allowed by permit.

The Coral Reef Ecosystem FMP, and its associated EIS, would be the Council's fifth FMP for the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km^2 (4,000 square miles) of coral reefs. Development of the Coral Reef Ecosystem FMP is timely, considering such new mandates and initiatives as the April 1999 report to Congress by the Ecosystem Principles Advisory Panel on Ecosystem-Based Fishery Management, the President's 1998 Executive Order on Coral Reefs (E.O. 13089), and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the provisions of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. The draft Coral Reef Ecosystem FMP would describe the importance of coral reef resources to the region and current and potential threats that warrant an FMP at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region. Marine debris, largely from fishing gear, is adversely impacting reefs in the Northwestern Hawaiian Islands.

The public is also invited to assist the Council in developing the scope of alternatives and impacts that should be analyzed in an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. An EIS has not been prepared for the FMP. Since the FMP was implemented in 1986, many changes have occurred in this fishery, and with the stocks and management regimes. As part of the scoping process for the EIS for this FMP, the public is also invited to comment on an alternative being considered for the addition of bottomfish species, in the EEZ around the U.S. Pacific Island possessions (and the Commonwealth of the Northern Mariana Islands (CNMI)), to the management unit of the Bottomfish and Seamount Groundfish FMP. Federal regulations for the EEZ off the U.S. Island possessions (and the CNMI) that would provide basic protection and conservation measures are already established in the EEZs for other parts of the Western Pacific Region, and include no taking with explosives, poisons, trawl nets or bottom-set gillnets. A definition of overfishing for a list of identified FMP management unit species would be established and evaluated annually, with required action in the event of overfishing.

Public Information Meetings

Additional public information meetings and public hearings on the proposed EISs may be held in Hawaii later in the year. These meetings will be advertised in the **Federal Register** and the local newspapers.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (see **ADDRESSES**), 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21073 Filed 8–11–99; 9:37 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 157

Monday, August 16, 1999

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

DATE AND TIME: September 14–16, 1999, 9:00 a.m.–5:00 p.m.

PLACE: Food and Nutrition Service, 3101 Park Center Drive, 4th Floor Conference Room, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

STATUS: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: August 3, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–21203 Filed 8–13–99; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Knight Restoration Project, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for restoration projects within the Red Knight planning area on the Chemult Ranger District of the Winema National Forest. Red Knight planning area is located in T29S, T30S, R10E, R11E, Willamette Meridian and covers an area of approximately 36,000 acres. The planning area is located west/northwest of Yamsay Mountain Semiprimitive Recreation Area and south of the Silver Lake Highway. Jackson Creek traverses the planning area. The Winema National Forest invites written comments on this proposal and the scope of analysis. The agency will give notice of the full environmental analysis and decision-making process so interested and affected persons may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received by September 20, 1999.

ADDRESSES: Send written comments to Red Knight Project, Chemult Ranger District, P.O. Box 150, Chemult, Oregon 97731.

FOR FURTHER INFORMATION CONTACT: Jayne Goodwin, 541–365–7072 or e-mail at: jgoodwin/r6pnw__winema@fs.fed.us.

SUPPLEMENTARY INFORMATION: This project will be consistent with the Winema National Forest Land and Resource Management Plan as amended by the Revised Environmental Assessment for the Continuation of Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales (Eastside Screens) and the Inland Native Fish Strategy Environmental Assessment (INFISH). The Eastside screens were designed to offer conservative protection to riparian, ecosystem, and wildlife values. INFISH provides interim direction to protect habitat and populations of resident native fish outside of anadromous fish habitat. The Red Knight planning area incorporates the following Forest Plan Management Areas (MA): Scenic Management (MA–3) designed to maintain and create visually pleasing scenery; Old-Growth Ecosystems (MA–7) designed to provide, maintain and enhance existing mature and old-growth communities; Riparian Areas (MA–8) designed to protect soil, water, wetland, floodplain, wildlife, and fish resource values; Timber Production (MA–12) designed to produce a high level of growth and timber production; and Upper Williamson (MA–15) designed to provide a natural-appearing forest setting for dispersed recreation activities and special wildlife habitats. The planning area is within former Klamath India Reservation lands.

Purpose and Need

Portions of the Red Knight planning area are crowded with trees that are competing for nutrients, water, and growing space. Dwarf mistletoe infections are present. Mature and old-growth ponderosa pine and mixed conifer habitat is at risk from competition-induced mortality and wildlife. Aspen stands are declining due to lodgepole pine encroachment. Fire suppression and growth of stands have resulted in development of excessive fuel accumulations and a decline in forage production. Prior to recognition of the value of standing and down dead trees, past harvest practices created a shortage of snags and down logs. Current open road densities exceed recommendations for big game habitat. Densities average approximately 5 miles of open road per section (a section is one square mile).

The existing conditions described above have created needs—(1) for sustainable mature and old-growth habitat and quaking aspen habitat for support of populations of native species; (2) for reduced risk of stand replacement fires within the planning area; and (3) for sustainable habitat for big game. Scoping may identify more needs.

Proposed Action

Proposed activities include approximately 12,000 areas of commercial thinning (thinning-from-below) and 24,000 acres of precommercial thinning. Approximately 11,000 of the 24,000 acres of precommercial thinning would occur within proposed commercial thinning areas. Other proposed activities are approximately 400 acres of pruning of dwarf mistletoe-infected trees, 50 acres of quaking aspen regeneration, 10,000 acres of prescribed burning or mowing of shrubs, seedlings, and small saplings, creation of 2,000 snags, evaluate access and travel opportunities, 50 miles of road closures, and 37 miles of road obliteration.

Alternatives

The No Action alternative will serve as a baseline for comparison of alternatives and will be fully developed and analyzed. With the No Action alternative, there would be no activities implemented based on the Red Knight analysis. Previously approved activities, and routine protection and maintenance activities will continue. The proposed action, as described above, will be considered and other alternatives developed around the proposed action to address issues identified in the scoping and public involvement process.

Issues

Preliminary issues identified are—Klamath Tribes culture and treaty resources (subsistence hunting, fishing, and gathering), mature and old-growth habitat, forest health, and wildfire risk.

Public Involvement

Scoping determines issues to be addressed and identifies the significant issues related to a proposed action. The Forest Service will seek information and comments from Tribes, Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. Scoping will be achieved through mailings, newspaper notices, website postings (www.fs.fed.us/r6/winema), and field trips. Field trips to the planning area are scheduled for August, September, and October of 1999.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Estimated Dates for Draft and Final EIS

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by April 2000. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,55 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that the substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in July 2000. The Forest Service is the lead agency. Forest Supervisor, Winema National Forest, is the responsible official. The responsible official will document the decision and rationale for the decision for the Red Knight Restoration Project in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 29, 1999.

Mary C. Erickson,

Acting Deputy Forest Supervisor, Winema National Forest.

[FR Doc. 99–21110 Filed 8–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Science and Technology.

Title: Malcolm Baldrige Quality Award Application.

Agency Form Number: None.

OMB Approval Number: 0693–0006.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden Hours: 10,000.

Number of Respondents: 100.

Average Hours Per Response: 100.

Needs and Uses: The Malcolm Baldrige Quality Award is nationwide award to promote the awareness of performance excellence, recognize excellent performance achievements of U.S. organizations, and to share successful quality strategies and practices. The information provided is used to evaluate the applicant's eligibility to receive the Award.

Affected Public: U.S. organizations that choose to apply for the Malcolm Baldrige National Quality Award.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *LEngelme@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: August 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21099 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Export Assistance Center Website Form.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 417 hours.

Number of Respondents: 5,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The New York Export Assistant Center, which is a combined effort of the U.S. Department of Commerce's International Trade Administration (ITA), Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. In 1998, it launched an interactive website, www.nyuseac.org that is geared to the needs of New York and New Jersey metropolitan industry. One electronic form is proposed to be added to the website in order to improve the usefulness of the site. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in. This generic form will also be available for use by all of ITA's Export Assistance Centers.

Affected Public: Businesses or other for profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington D.C. 20230 (or via the internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice.

Dated: August 10, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21100 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: BISNIS Publication Subscription Form.

Agency Form Number: N/A.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 170 hours.

Number of Respondents: 2,040.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: The International Trade Administration's (ITA) Business Information Service for the Newly Independent States (BISNIS) program offers business information and counseling to U.S. companies seeking to export or to invest in the countries of the former Soviet Union.

A critical component of the program is the dissemination of information regarding market conditions and opportunities in various industries and countries of the former Soviet Union. These information products provided by BISNIS are in the form of emails, faxes, and paper mailers. The Publication Subscription form is a quick way for interested parties to tell BISNIS which products they want and what is their industry and country interests.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Roster, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 (or via the internet at *LEngelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent to David Roster, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: August 10, 1999.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–21101 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Employment Inquiry.

Form Number(s): BC–170.

Agency Approval Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden: 762,500 hours.

Number of Respondents: 3,050,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The BC–170, Census Employment Inquiry, is used by the Census Bureau to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal years in situations which require the establishment of a temporary office and/or involve special, one-time survey operations. Applicants completing the form are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). Selecting officials review the information shown on the form to determine the best qualified applicants. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

Current efforts to hire an enormous temporary workforce for Census 2000 will significantly increase the usage of the BC–170. The 2000 Census is the largest peacetime mobilization of civilians that enumerate and account for the population of the United States. We expect to recruit approximately 3,000,000 applicants for Census 2000 jobs.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 USC, Section 23.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–21102 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–505–801, A–201–825, A–517–802, A–307–817, C–505–802, C–201–826, C–517–803, C–307–818]

Dismissal of Antidumping and Countervailing Duty Petitions: Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Thomas Schauer (Antidumping) or Roy Malmrose (Countervailing Duty), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4794, (202) 482–0410, or (202) 482–5414, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petitions

On June 29, 1999, the Department received petitions filed in proper form by Save Domestic Oil, Inc. (hereinafter referred to as the petitioner), an organization composed of producers of crude oil. The Department received supplemental submissions during June, July, and August 1999.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, a regional [1] industry in the United States. In addition, in accordance with section 702(b)(1) of the Act, the petitioner alleges that producers or exporters of crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela received countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioner is an interested party as defined in section 771(9)(E) of the Act. However, as discussed below, the petitioner has not demonstrated that it filed the petitions on behalf of the domestic industry. Because the petitioner has failed to demonstrate sufficient industry support, as required by sections 702(c)(4) and 732(c)(4) of the Act, the Department has no basis to initiate the requested investigations (see the ''Determination of Industry Support for the Petitions'' section, below).

Scope of the Petitions

For purposes of these petitions, the product covered is all crude petroleum oils and oils obtained from bituminous minerals testing at, above, or below 25 degrees A.P.I. The merchandise covered by these petitions is classifiable under subheadings 2709.00.10 and 2709.00.20 of the Harmonized Tariff Schedule of the United States.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of Mexico, Saudi Arabia, and Venezuela for consultations with respect to the countervailing duty petitions filed. On August 2, 1999, consultations were held with representatives of the Government of Venezuela. On August 5, 1999, consultations were held with representatives of the Governments of Mexico and Saudi Arabia. See the August 3, 1999, August 5, 1999, and August 6, 1999, memoranda to the file regarding these consultations.

Determination of Industry Support for the Petitions

a. The Regional Industry

The petitioner alleges that there is a regional industry for the domestic like product. In support of its allegation, the petitioner provided sufficient information, reasonably available to the petitioner, regarding the criteria set out in section 771(4)(C) of the Act: (1) the producers within such market sell all or almost all of their production of the domestic like product in question in that market; (2) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States; and (3) appropriate

[1] The region identified by the petitioner consists of the 48 contiguous states, excluding Arizona, California, Nevada, Oregon, and Washington.

circumstances exist to divide the United States into the two markets alleged.

In accordance with sections 702(c)(4)(C) and 732(c)(4)(C) of the Act, if the petitioner alleges that the industry is a regional industry, the Department shall determine whether the petition has been filed by or on behalf of the industry by applying the requirements set forth in sections 702(c)(4)(A) and 732(c)(4)(A) of the Act on the basis of the production in the region. The Department has reviewed the adequacy and accuracy of the information supplied by the petitioner with respect to its regional-industry claim. Based upon this review and in accordance with the statutory criteria stated above, the petitioner has made an adequate regional-industry claim for initiation purposes. For a further discussion regarding the regional-industry claim, see Memorandum from Laurie Parkhill to Richard W. Moreland, dated August 8, 1999.

b. Scope of the Industry Examined for Support

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the Department's analysis of the domestic like product begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The ''Scope of the Petitions'' section above sets forth the domestic like product identified in the petitions. In addition to the products included in the petitioner's definition of domestic like product, parties have argued that two other products, refined products and ''lease condensates,'' should be included within the domestic like product.

With respect to refined products, we determine that there is a clear dividing line between the characteristics and uses of crude oil and refined products. Crude oil, which is the input product used to produce a refined product, must undergo a distinct and significant process to become a refined product such as gasoline and other fuel oils. While both crude oil and refined products consist of hydrocarbon compounds, the refining process changes the physical structure and characteristics of the compounds found originally in the crude oil such that generally there remains no significant similarities between the two products in terms of physical characteristics and uses. Because of the differences in characteristics and uses, we determine that refined products are not within the domestic like product for purposes of determining industry support for the petitions. See Memorandum from the Team to Richard W. Moreland, regarding ''Domestic Like Product,'' dated August 9, 1999, for additional analysis.

The issue of whether ''lease condensates'' are included properly within the domestic like product is more complicated. Lease condensates consist essentially of a mixture of certain hydrocarbon compounds that, in terms of weight and complexity, fall between natural gas and crude oil. They are liquids formed from natural gas as a result of temperature or pressure changes. Often lease condensates are mixed with crude oil and the resulting mixture is sold to a refinery as crude oil.

The petitioner argues that the Department should not include lease condensates in the domestic like product because the mixture of hydrocarbon compounds in lease condensates is different from the mixture of hydrocarbon compounds in crude oils. Consequently, it asserts, lease condensates can only be refined into a limited range of products. Opposing the petitioner's position, other parties have argued that lease condensates are very similar in physical characteristics and uses to light crude oil and that, when mixed, they simply become an indistinguishable part of the crude-oil stream which is sent to the refinery.

In addition to the extremely complex technical nature of the issue, ascertaining the precise nature of available production and distribution data as well as attempting to establish the appropriate analytical framework for a very diverse industry has been problematic for the Department. However, it is not necessary to decide this issue because, as discussed below, we have determined that the petitioner does not have the requisite industry support, regardless of how the issue of lease condensates is resolved.

c. Calculation of Industry Support Within the Region

Sections 702(b)(1) and 732(b)(1) of the Act require that a petition be filed on behalf of the domestic industry. In particular, sections 702(c)(4)(A) and 732(c)(4)(A) of the Act provide that a petition meets this requirement if the domestic producers or workers in the region who support the petition account for: (1) at least 25 percent of the total production of the domestic like product in the region; and (2) more than 50 percent of the production of the domestic like product produced in the region by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner alleges that, based on the support of individual producers and support by a number of industry associations, the petitions have the required support of the industry. As of July 27, 1999, the Department had received letters from 20 domestic producers opposing the petitions. In the aggregate, these producers accounted for approximately 50 percent of total production within the region. Because there was a question as to whether the petitioner met the statutory requirements concerning industry support cited above, we exercised our statutory discretion under sections 702(c)(1)(B) and 732(c)(1)(B) of the Act to extend the deadline for determining whether to initiate investigations to a maximum of 40 days from the date of filing in order to resolve this issue. See Memorandum from the Industry Support Team to Richard W. Moreland, regarding ''Determination of Industry Support,'' dated July 30, 1999.

In order to determine the level of industry support for the petitions, the Department surveyed (1) each of the 410 largest producers in the region, which

[2] See *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988), and *High Information Content Flat Panel Displays and Display Glass Therefor from Japan; Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

accounted for over 86 percent of regional production, and (2) a 401-company sample of the remaining producers in the region. The purpose of the survey was to ascertain the companies' positions with regard to the petitions. We received responses from 41 percent of the 410 companies and 18 percent of the sampled 401 companies.

As mentioned above, we received letters of opposition from a number of companies who accounted for approximately 50 percent of total regional production. Based on the surveys, additional companies indicated that they opposed the petitions.

The petitioner submitted comments alleging that certain companies opposed to the petitions are related to producers in the subject countries and that a number of those companies are importers of subject merchandise. The petitioner argues that, consistent with sections 702(c)(4)(B) and 732(c)(4)(B) of the Act, the positions of these companies should be disregarded.

Sections 702(c)(4)(B) and 732(c)(4)(B) of the Act provide that the position of certain domestic producers may be disregarded for purposes of determining industry support. Specifically, subsection (B)(i) provides that the position of domestic producers who oppose the petition shall be disregarded ''if such producers are related to foreign producers * * * unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping [or countervailing] duty order.'' Additionally, subsection (B)(ii) provides that the position of domestic producers of a domestic like product who are importers of the subject merchandise may be disregarded.

Our analysis of whether to disregard any positions focused on whether the opposing companies have demonstrated that their interests as domestic producers would be affected adversely by the imposition of an antidumping or countervailing duty order. Because we are able to resolve the issue on this basis, we need not determine whether these companies are related to foreign producers. We note, however, that we have serious questions about the sufficiency of the petitioner's allegations. For example, we question whether the petitioner has provided sufficient evidence of any relationship, as defined in section 771(4)(B) of the Act, and, in the case of alleged relationships as defined in section 771(4)(B)(ii)(IV) of the Act, that these relationships would cause the domestic producer to act differently than a non-related producer. We have not resolved these questions; rather, we looked first at the question of whether the opposing domestic producers had established that their interests as domestic producers would be adversely affected by the imposition of an antidumping or countervailing duty order, in which case the issue of whether they are related parties becomes moot. In this regard, we focused our analysis on the API Ad Hoc Free Trade Committee (the Committee) because it is composed of the largest U.S. producers in opposition to the petitions and because its treatment is dispositive of the industry support issue.

The Committee argues that its opposition is not based on foreign interests or imports, but rather on the based on the fact that the Committee members' interests as domestic producers would be adversely affected by the imposition of antidumping or countervailing duties. The Committee also argues that the petitioner has not alleged that each U.S. producer about which allegations were made is related to a foreign producer in each of the subject countries. Moreover, the petitioner has provided no basis for assuming that a relationship in one country would cause a producer to oppose a case against another country with potentially competing suppliers.

Even assuming there are relationships, the Committee argues, because the interest of domestic producers opposing the petition would be adversely affected by the imposition of an order, the Department must consider their views. The arguments and information presented by the Committee to demonstrate the adverse affects it believes would ensue are described in its August 2, 1999, and August 4, 1999, submissions. Finally, with respect to imports, the Committee argues that importing is a standard practice in the U.S. oil industry and that the large producers account for only a small portion of total imports. Moreover, the Committee argues, domestic producers which oppose the petition are not bound to imports from the subject countries. Therefore, the Committee argues, the Department should not disregard its opposition.

After reviewing comments submitted by all parties, we believe that the Committee and other opposing companies have demonstrated that their interests as domestic producers would be adversely affected by the imposition of an antidumping or countervailing duty order. Accordingly, we have not disregarded the opposition of the Committee members alleged to be related to foreign producers. In addition, we have determined that the Committee members who import should not be excluded because those domestic producers have demonstrated that their opposition to the petitions is based on their concern that the imposition of an antidumping or countervailing duty order would adversely affect their interests as domestic producers. For a further discussion, see Memorandum from the Industry Support Team to Richard W. Moreland, regarding ''Consideration of Opposition from Domestic Producers Alleged to Be Related to Foreign Producers and/or Importing Subject Merchandise,'' dated August 9, 1999.

Based on the opposition we received from companies we have determined not to disregard, we find that the petitions do not have support from more than 50 percent of the production in the region of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. The opposition of the Committee and companies not challenged by the petitioner ranges from 65 to 68 percent across the various cases. See Memorandum from the Industry Support Team to Richard W. Moreland, regarding ''Calculation of Industry-Support Percentages,'' dated August 9, 1999. Accordingly, we determine that the petitions are not filed on behalf of the domestic industry within the meaning of sections 702(b)(1) and 732(b)(1) of the Act.

There are a number of complex issues regarding the 25-percent test which we are not addressing because the 50-percent test has not been met.

Because the petitions did not have the required industry support, all other issues are moot. Notice is hereby given that the petitions are dismissed and the proceedings terminated.

International Trade Commission Notification

We have notified the ITC of our determination, as required by sections 702(d) and 732(d) of the Act.

This notice is published pursuant to section 777(i) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21197 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: In response to requests from interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This review covers two manufacturers of the subject merchandise. The period of review (''POR'') is August 1, 1997 through July 31, 1998.

We have preliminarily determined that certain sales subject to this review have been made below normal value (''NV''). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (''EP'') and the NV.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Brandon Farlander, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0413, 482–0182, or 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Background

On July 19, 1993, the Department published in the **Federal Register** (58 FR 37154) the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. On August 31, 1998, Nippon Steel Corporation (''*NSC*'') and Kawasaki Steel Corporation (''*KSC*'') requested reviews of their exports to the United States of corrosion-resistant steel. On September 29, 1998, in accordance with section 751 of the Act, we published a notice of initiation of administrative review of this order for the period August 1, 1997 through July 31, 1998 (63 FR 51893).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On February 24, 1999, the Department published a notice of extension of the time limit for the preliminary results of this review to August 1, 1999. *See Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review,* 64 FR 9127 (February 24, 1999). Petitioners submitted comments for consideration for the preliminary results for NSC and KSC on July 22, 1999, and July 20, 1999, respectively. The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Reviews

This review covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by NSC and sales and cost information provided by KSC, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports, which are on file with the Department in the Central Records Unit, Room B-099.

Transactions Reviewed

In accordance with section 751 of the Act, the Department is required to determine the EP (or Constructed Export Price (''CEP'')) and NV of each entry of subject merchandise.

NSC

On October 9, 1998, respondent requested that it be relieved from reporting certain information, *e.g.*, price adjustments, for home market sales by certain of NSC's affiliated manufacturers. Respondent argued that it should not be required to report such information on sales by these affiliated manufacturers because these sales were not exported to the United States and would not provide the most similar product matches to the subject merchandise under review. Therefore, respondent reported only matching characteristics for these sales.

In addition, for other home market sales by affiliated parties, NSC stated that it was unable to collect sales data from all affiliated resellers. *See* Questionnaire Response, dated December 8, 1998 at p. B–5. For further discussion of NSC's downstream sales, *see* Normal Value (Section C, ''Downstream Sales''), below.

KSC

KSC reported export sales that occurred in only one month and consisted of only prime merchandise. On October 6, 1998, KSC requested that it report sales from only a six-month home market period because KSC's export sales occurred in only one month. On October 20, 1998, we allowed KSC to report sales for a six month period in accordance with section 351.414(e)(2)(ii)–(iii) of the Department's regulations. On November 12, 1998, KSC requested that the Department allow it to report only merchandise similar to U.S. sales. Specifically, KSC requested that it only report sales and cost information for prime merchandise. On November 20, 1998, we granted KSC's requests, subject to verification that its U.S. sale of subject merchandise consisted of only prime merchandise and occurred in only one month.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by respondents covered by the description in the ''Scope of the Review'' section of this notice, (*supra*), and sold in the home market during the period of review (''POR''), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 19, 1998 antidumping questionnaire. In making product comparisons, we matched foreign like products based on the physical characteristics reported by respondents and verified by the Department. Consistent with Department practice, we matched a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model were below cost.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Level of Trade (''LOT'')

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

NSC

In the present review, NSC claimed that only one LOT existed and did not request a LOT adjustment. To evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and home market, including the selling functions, classes of customer, and selling expenses.

NSC reported one LOT in the home market based on two classes of customers: trading companies and end-users. We examined the reported selling functions and found that NSC provides the same selling functions to its home market customers regardless of channel of distribution. We preliminarily conclude that the selling functions between the reported channels of distribution are sufficiently similar to consider them as one LOT in the comparison market.

NSC stated that it sells to one LOT in the United States: trading companies. We compared the selling functions performed at the home market LOT and the LOT in the United States and found them substantially similar. Of the thirteen selling functions reported for home market sales, twelve of the selling functions were identical to U.S. sales. For a further discussion of the Department's LOT analysis, *see Analysis Memorandum: Preliminary Results of the Antidumping Review of Corrosion-Resistant Carbon Steel Flat Products for NSC (''Analysis Memo: Preliminary Results for NSC''),* (August 2, 1999). Therefore, the Department preliminarily finds that no LOT adjustment is warranted for NSC.

KSC

To evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and home market, including the selling activities, classes of customers, and selling expenses. In the present review, KSC reported two LOTs in the home market and one LOT in the U.S. market. KSC stated that the LOTs in the home market have consistent price differences. Thus, KSC requested an LOT adjustment if sales at different LOTs are compared. In the U.S. market, KSC reported one channel of distribution in the one LOT, *i.e.*, sales through an unaffiliated trading company.

In the home market, KSC reported two channels of distribution in the first LOT:

(1) sales to unaffiliated trading companies; and (2) sales directly to end-users (unaffiliated and affiliated). In both channels of distribution, sales were made by either KSC or its affiliated producer, Kawatetsu Galvanizing Co., Ltd. (''Kawahan''). KSC reported one channel of distribution in the second LOT: sales through KSC's affiliated reseller, Kawasho Corporation (''Kawasho'') to distributors and end-users. These sales were made by both KSC and Kawahan.

For the preliminary results, we disagree with KSC's classification for the above channels of distribution, and have established the following two LOTs in the home market: (1) affiliated and unaffiliated trading companies; and (2) end-users. KSC and Kawahan sold subject merchandise to two types of customers: (1) trading companies (affiliated or unaffiliated), and (2) end-users. These sales represent two different points in the chain of distribution between the producers and the final end-user. That is, in the one instance (sales to trading companies), the subject merchandise passes through the intermediary parties, while in the other case, sales are made without any intervening parties. As a result, these sales to different points in the distribution chain appear to represent different levels of trade in the home market.

The Department then examined whether any differences existed with respect to the selling activities KSC performed in making sales to these two types of customers. Regarding the selling activities with respect to the sales to end-users, KSC and Kawahan conducted the following twelve selling activities: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, payment collection, and evaluating warranty claims. KSC and Kawahan's level of involvement in these twelve selling activities was high.

Regarding sales to trading companies, KSC and Kawahan conducted the following nine selling activities to its affiliated trading company: market intelligence, end-user information, end-user contact lead role, marketing services, end-user price negotiations, daily issues end-user contact, warehousing, processing, and evaluating warranty claims. KSC and Kawahan's level of involvement in these nine selling activities was at a low level except for evaluating warranty claims, which was at a high level. KSC and Kawahan conducted the following eleven selling activities to its unaffiliated trading companies: market intelligence, end-user information, end-user contact lead role, marketing services, credit checks, end-user price negotiations, daily issues end-user contact, warehousing, processing, arranging for freight, and evaluating warranty claims. However, KSC and Kawahan's level of involvement in these eleven selling activities was at a low level, except for warehousing, processing, arranging for freight, and evaluating warranty claims, which were at a high level. Based on this information, we find that KSC and Kawahan's selling activities to its trading companies, whether affiliated or unaffiliated, were at the same LOT.

We determined that differences existed with respect to selling activities KSC and Kawahan performed in making sales to these two types of customers. For sales to end-users, KSC and Kawahan's level of involvement for all twelve selling activities was high, whereas, for sales to trading companies (either affiliated or unaffiliated), KSC and Kawahan's level of involvement was in only nine selling activities for the affiliated trading company and eleven selling activities for the unaffiliated trading companies, as noted above. In addition, of these nine selling activities that KSC and Kawahan was involved in for its affiliated trading company, KSC and Kawahan's level of involvement was low for eight selling activities. Finally, of the eleven selling activities that KSC and Kawahan was involved in for its unaffiliated trading companies, KSC and Kawahan's level of involvement was low for seven selling activities.

Based on the different points in the chain of distribution and the differences in selling functions between the trading companies and the end-users, the Department preliminarily finds that two levels of trade exist for KSC's sales in the home market. Furthermore, the U.S. sales were at the same LOT as KSC's home market sales to trading companies.

The Department then checked to determine whether a pattern of consistent price differences existed between the two home market levels of trade. The Department found that no pattern of consistent price differences existed between the home market LOTs by running a pattern of price difference SAS program. Therefore, we did not adjust NV to account for any differences in LOT. For a further discussion of the Department's LOT analysis, *see Analysis Memorandum: Preliminary Results of the Antidumping Review of Corrosion-Resistant Carbon Steel Flat Products for KSC (''Analysis Memo: Preliminary Results for KSC'')* (August 2, 1999).

Date of Sale

It is the Department's current practice normally to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i) (62 FR at 27411).

NSC

For its home market and U.S. sales, NSC reported the date of shipment. NSC stated that the invoice/shipment date best reflects the date on which the material terms of sale are established, and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. To ascertain whether NSC accurately reported the date of sale, the Department requested information concerning the nature and frequency of price and quantity changes occurring between the date of order confirmation and date of invoice. *See* Supplemental Questionnaire for Section A (November 13, 1998).

In its December 11, 1998, December 29, 1998 and February 18, 1999, responses, NSC indicated that there were numerous instances in which the essential terms of sale changed subsequent to the confirmation of the original orders in the U.S. and home markets. NSC reported the percentage of total quantity shipped that had changes in the material terms of sale subsequent to the confirmation of original orders in the U.S. and home markets. *See* December 11, 1998 Supplemental Response at p. 1; Verification Exhibit 1, Revised Exhibit SS–A5 of the February 19, 1999 Supplemental Response; and *Analysis Memo: Preliminary Results for NSC* (August 2, 1999).

At verification, we examined NSC's selling practices and found that it records sales in its financial records by date of invoice/shipment. We reviewed several sales observations for which the price and quantity changed subsequent to the original order. We reviewed and confirmed the accuracy of NSC's reported percentage of the number of sales that had material changes in terms of sale subsequent to the order confirmation. We are satisfied that the date of invoice/shipment best reflects the date on which material terms of sale were established for NSC's U.S. and home market sales. Therefore, the Department is preliminarily using the dates of sales reported by NSC.

KSC

For its home market and U.S. sales, KSC reported the date of invoice/shipment as the date of sale. KSC stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. To ascertain whether KSC accurately reported the date of sale, the Department requested information concerning the nature and frequency of price and quantity changes occurring between the date of order confirmation and date of invoice. *See* Supplemental Questionnaire for Section A dated November 13, 1998.

In its December 4, 1998 and March 22, 1999 supplemental questionnaire responses, KSC indicated that there were numerous instances in which material terms of sales, such as price and quantity, changed subsequent to the confirmation of the original orders in the U.S. and home markets. KSC reported the percentages of orders which had a change in the material terms of sale after the order confirmation date (*see* KSC's March 22, 1999 Supplemental Questionnaire Response at p. 6–7) and the percentages of home market sales of subject merchandise that were revised after shipment (*Id.* at pp. 9–10; *Sales Verification Exhibit (''SVE'') 37).* As this involves proprietary information, *see Analysis Memo: Preliminary Results for KSC* (August 2, 1999).

At verification, we examined KSC's selling practices and found that KSC records sales in its financial records by date of invoice/shipment. We reviewed several sales observations for which the price and quantity changed subsequent to the original order. We reviewed and confirmed the accuracy of KSC's reported percentage of the number of sales that had material changes in terms subsequent to the order confirmation. We are satisfied that the date of invoice/shipment best reflects the date on which material terms of sales were established for KSC's U.S. and home market sales. Therefore, the Department is preliminarily using the dates of sales reported by KSC.

United States Price

For calculation of the price to the United States, we used EP because the subject merchandise was sold prior to importation, directly or indirectly to the first unaffiliated purchaser in the United States and CEP was not otherwise warranted.

NSC

The Department calculated EP for NSC based on packed, prepaid or delivered prices to customers in the United States. We made adjustments to the starting price, net of billing adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

KSC

The Department calculated EP for KSC based on packed, prepaid or delivered prices to customers in the United States. We made adjustments to the starting price, net of billing adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

Normal Value

After testing home market viability and whether home market sales were made at prices that were below the cost of production, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice. In addition, in accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same level of trade (''LOT'') as the U.S. price. *See* the Level of Trade section above.

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both respondents. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices for each company, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all applicable discounts, rebates, billing adjustments, movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length and used those sales in determining NV. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our LTFV analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

C. Downstream Sales

Pursuant to section 351.403 of the Department's regulations, the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. The questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. *Id.* In addition, the Department normally will not require the respondent to report the affiliate's downstream sales unless the sales to the affiliate fail the arm's length test. *Id.* The Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales. *Id.*

As discussed below, after examining the data placed on the record, the Department has preliminarily determined that for both NSC and Kawasaki, there are sufficient matches of sales in the home market, and that the downstream sales in question account for less than five percent of each firm's total home market sales of subject merchandise. Thus, for purposes of these preliminary results, the Department has allowed this limited reporting for downstream sales since we found adequate home market matches to U.S. sales.

NSC

In its response to the questionnaire, NSC stated that it was unable to collect sales data from all affiliated resellers. *See* Questionnaire Response, dated December 8, 1998 at p. B–5. (As this involves proprietary information, *see Analysis Memo: Preliminary Results for NSC*, August 2, 1999.) Thus, NSC only reported sales by one affiliated reseller. *Id*. The Department requested that NSC further explain its selection methodology for reporting sales by affiliated resellers. *See* Second Supplemental Questionnaire dated November 13, 1998 at p. 1. NSC elaborated concerning its inability to report sales, its methodology in reporting certain transactions and the impact of reporting resales on the dumping margin. *See* Second Supplemental Questionnaire Response dated December 11, 1998 at pp. 4–5. Based on these responses, for the preliminary results, we have used the data as provided by NSC for the purposes of establishing NV.

KSC

KSC stated that it was not able to report all affiliated downstream sales information, because neither KSC nor its affiliates maintain the necessary information. *See* KSC's March 22, 1999 Supplemental Response, page 21. As reported by KSC, KSC/Kawahan sells to Kawasho Corporation (''Kawasho''), who then sells the product to affiliated processors/distributors. At verification, we examined documentation for these transactions. However, as reported by KSC, when the affiliated processor/distributor sells the merchandise back to Kawasho (after further processing the merchandise), most of the affiliated processors/distributors do not maintain information to link these sales to the prior purchases from Kawasho. Thus, KSC provided limited downstream sales made by its affiliated reseller, Kawasho (specifically, KSC reported downstream sales for only one of Kawasho's affiliated processors/distributors); and reported sales made by Kawahan (itself a producer of subject merchandise affiliated with KSC) to its affiliates and non-affiliates, but did not report Kawahan's affiliates' sales to its downstream customers. KSC was unable to report Kawahan's affiliates' sales to its downstream customers because Kawahan cannot recover any product characteristic data to link its affiliates' sales to Kawahan's sale to its affiliates. In addition, one of Kawahan's affiliated customers refused to provide its downstream sales data, despite Kawahan's request. At verification, we examined KSC's ability to report the sales from affiliates of Kawahan and Kawasho. *See* Sales Verification Report for additional information. We also reviewed, at verification, Kawasaki's claim that Kawasho's total sales of KSC- and Kawahan-produced subject merchandise to affiliated resellers are less than five percent of total home market sales, as stated in KSC's October 28, 1998, section A response, page A–3. We found no discrepancies. *See SVE 31,* Analysis of Kawasho's Sales to Affiliated Resellers. Because this issue includes proprietary information, *see Analysis Memo: Preliminary Results for KSC* for further discussion. Based on these responses, for the preliminary results, we have used the data as provided by KSC for the purposes of establishing NV.

D. Cost of Production (COP) Analysis

For the class or kind of merchandise under review, the Department disregarded sales below the cost of production (''COP'') in the last completed review as of the date of the issuance of the antidumping questionnaire for NSC (*Certain Corrosion-Resistant Carbon Steel Flat Products Final Results of Antidumping Duty Administrative Review,* 64 FR 12951 (Mar 16, 1999) and for Kawasaki (*Certain Corrosion-Resistant Carbon Steel Flat Products from Japan:(see Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Determinations of Sales at Less Than Fair Value),* 58 FR 37154 (July 9, 1993)). We therefore had reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP. Pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by respondents in the home market.

1. Calculation of COP

We compared each respondent's sales of the foreign like product in the home market with each respondent's model-specific COP figure for the POR. In accordance with section 773(b)(3) of the Act, we calculated each respondent's COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment. In our COP analysis, we used each respondent's home market sales and COP information provided in its questionnaire responses, with the following exceptions. First, where KSC reported more than one cost for the same CONNUM, we calculated a single weighted-average cost for each CONNUM using the reported production quantities. Second, we revised variable cost of manufacturing because KSC double counted labor costs. Third, we revised KSC's financial expense rate. *See Analysis Memo: Preliminary Results for KSC* for further information.

2. Test of Home Market Prices

After calculating each respondent's COP, we tested whether home market sales of subject merchandise were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

4. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COP included in the calculation of CV as noted above, in the ''Calculation of COP'' section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

NSC

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers, as well as affiliated purchasers passing the arm's length test, in accordance with 19 CFR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We calculated the starting price net of discounts, and other sales adjustments, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (''COS'') in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, royalties, discounts, and warranty expenses, where applicable) and adding U.S. direct selling expenses (credit, warranty, royalties, and discounts, where applicable).

KSC

For those models for which there was a sufficient quantity of sales at prices at or above COP, we based NV on home market prices to unaffiliated purchasers, as well as affiliated purchasers passing the arm's length test, in accordance with 19 CFR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We calculated the starting price net of billing adjustments and rebates, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (''COS'') in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, advertising, royalties, technical service, and warranty expenses, where applicable) and adding U.S. direct selling expenses (credit, and advertising expenses, where applicable).

Price-to-CV Comparisons

For price-to-CV comparisons, if necessary, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for NSC and KSC, for the period August 1, 1997 through July 31, 1998, to be as follows:

Manufacturer/exporter	Time period	Margin (percent)
NSC	08/01/97–07/31/98	2.48
KSC	08/01/97–07/31/98	1.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in those briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rate for NSC and KSC will be that established in the final results of review (except that if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 40.19 percent, established in the LTFV investigation for corrosion-resistant steel products from Japan (*see Final Determination,* 58 FR 37154 (July 9, 1993)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These results of the administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21200 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 16, 1999.

SUMMARY: On April 24, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice (63 FR 20378) announcing the initiation of an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany, covering the period January 1, 1997 through December 31, 1997. Because the sole respondent company did not export any subject merchandise to the United States during the period of administrative review, the Department is now terminating this administrative review.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). All citations to the Department's regulations reference 19 CFR Part 351(April 1998), unless otherwise indicated.

Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15325) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from Germany. On March 11, 1998, the Department published a notice of ''Opportunity to Request an Administrative Review'' (63 FR 11868) of this countervailing duty order. We received a timely request for review from Saarstahl AG (Saarstahl), the sole respondent company to this proceeding. On April 24, 1998, we initiated the review, covering the period January 1, 1997 through December 31, 1997 (63 FR 20378). In accordance with 19 CFR 351.213(b), this review covered only those producers or exporters for which a review was specifically requested. Accordingly, this review covered Saarstahl.

On November 19, 1998, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Extension of the Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (63 FR 64235). On April 7, 1999, we published our preliminary results of administrative review. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 16915). Subsequently, based on a request by Inland Steel Bar Company and USS/KOBE Steel Co. (petitioners), we conducted verification of the questionnaire responses submitted.

Termination of Review

At verification, we discovered that Saarstahl misreported that it had exported subject merchandise to the United States during 1997. We verified that the company did not have any exports of subject merchandise to the United States during the period of review. Therefore, pursuant to section 351.213(d)(3) of the Department's regulations, the Department is terminating this administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with section 751(a)(1) of the Act.

Dated: August 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21199 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 12, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Sally Hastings or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1780, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2815, 482–3464 or 482–0176, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (1998).

Background

On July 24, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 38544) the countervailing duty order on certain pasta from Italy.

In accordance with 19 CFR 351.213(b), this review of the order covers the producers or exporters of the subject merchandise for which a review was specifically requested. They are:

Audisio Industrie Alimentari S.p.A. (''Audisio''); the affiliated companies Delverde SrL, Industrie Alimentari di Capitanata SrL, Sangralimenti SrL, and Pietro Rotunno SrL (''Delverde/Tamma''); Pastificio Fabianelli S.p.A. (''Fabianelli''); and Pastificio Riscossa F.lli Mastromauro SrL (''Riscossa''). The petitioners in this review are Borden, Inc., Hershey Foods Corp. and Gooch Foods, Inc. This review covers 25 programs.

Since the publication of the preliminary results of the second administrative review of the countervailing duty order on certain pasta from Italy on April 12, 1999 (*See Certain Pasta from Italy: Preliminary Results of Countervailing Duty Administrative Review* (64 FR 17618) (*Preliminary Results*), the following events have occurred. On May 4, 1999, we issued supplementary questionnaires to the Government of Italy (''GOI''), the European Union (''EU''), and the Government of the Piedmont Region. We received responses to these questionnaires on May 20, 1999. From May 24 through May 28, 1999, we verified the questionnaire responses of Audisio and Fabianelli. On May 12, 1999, Riscossa submitted its case brief. On June 22, 1999, petitioners and respondents Delverde/Tamma submitted case briefs. Respondents Audisio, Delverde/Tamma, and Fabianelli and petitioners filed rebuttal briefs on May 29, 1999. The Department did not conduct a hearing in this review because none was requested.

Scope of Review

The merchandise under review consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricoltura Biologica (''AMAB''), by Bioagricoop Scrl, or by QC&I International Services.

The merchandise under review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.

(3) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999.

Period of Review

The period of review (POR) for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: The companies under review did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under review were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate for years prior to 1995. For the years 1995 through 1997, we used the Italian Bankers Association (''ABI'') interest rate increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges. For a further discussion of the interest rates used in these final results, see Memorandum to File from Team, ''Calculation Memorandum for Final Results—Interest Rates,'' dated July 31, 1999.

Allocation Period: In *British Steel plc.* v. *United States,* 879 F.Supp. 1254, 1289 (CIT 1995) (''British Steel I''), the U.S. Court of International Trade (the Court) ruled against the allocation methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the *General Issues Appendix,* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993) (''*GIA*''). In accordance with the Court's remand order, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F.Supp 426, 439 (CIT 1996) (''*British Steel II*''). Accordingly, the Department has applied this method to those non-recurring subsidies that were not countervailed in the original investigation.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in the investigation, it is neither reasonable nor practicable to reallocate those subsidies over a different period of time. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each non-recurring subsidy countervailed in the original investigation on the basis of the allocation period established in the original investigation. This conforms with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997).

For non-recurring subsidies not countervailed in the original investigation, each company under review submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Each company's AUL was derived by dividing the sum of average gross book value of depreciable fixed assets over the past ten years by the average depreciation charges over this period. We found this calculation to be reasonable and consistent with our company-specific AUL objective. We have used these calculated AULs for the allocation period for non-recurring subsidies not countervailed in the original investigation.

Changes in Ownership

One of the companies under review, Delverde, purchased an existing pasta factory from an unrelated party. The previous owner of the purchased factory had received non-recurring countervailable subsidies prior to the transfer of ownership, which took place in 1991.

We have calculated the amount of the prior subsidies that passed through to Delverde with the acquisition of the factory, following the spin-off methodology described in the Restructuring section of the *GIA,* 58 FR at 37265. (For further discussion, see Comment 4 below.)

Affiliated Parties

In the present review, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company subject to review are required to respond.

In the *Preliminary Results,* and consistent with our determination in *Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy* 61 FR 30288, 30290 (June 14, 1996) *(Pasta from Italy)* we have treated Delverde SrL, Tamma Industrie Alimentari, SrL, Sangralimenti SrL, and Pietro Rotunno, SrL as a single company with a combined rate. We did not receive any comments on this treatment from the interested parties, and our review of the record has not led us to change this determination.

Analysis of Programs

I. Programs Previously Determined To Confer Subsidies

A. Industrial Development Grants

1. Law 64/86 Benfits

Delverde/Tamma and Riscossa benefitted from industrial development grants under Law 64/86 during the POR. In the *Preliminary Results* and in *Pasta from Italy,* we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by interested parties, summarized below in Comment 5, have not led us to change our findings for Delverde/Tamma and Riscossa. Accordingly, the net subsidies for this program have not changed from the *Preliminary Results* and are as follows: Delverde/Tamma 2.18 percent *ad valorem* and Riscossa 0.74 percent *ad valorem.*

2. Law 488/92 Benefits

Delverde/Tamma also benefitted from industrial development grants under Law 488/92 during the POR. In the *Preliminary Results,* we found that this program conferred regionally specific, countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings for Delverde/Tamma. Accordingly, the net subsidy for this program has not changed from the *Preliminary Results* and is as follows: Delverde/Tamma 0.23 percent *ad valorem.*

B. Industrial Development Loans Under Law 64/86

Delverde/Tamma received industrial development loans with interest contributions from the GOI. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations from the *Preliminary Results.* Accordingly, the net subsidy for this program remains unchanged and is as follows: Delverde/Tamma—0.65 percent *ad valorem.*

C. Export Marketing Grants Under Law 304/90

Delverde/Tamma received a grant under this program for a market development project in the United States. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations for Delverde/Tamma. Accordingly, the net subsidy for this program remain unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma—0.22 percent.

D. Social Security Reductions and Exemptions

1. Sgravi Benefits

Delverde/Tamma and Riscossa received countervailable social security reductions and exemptions during the POR. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.31 percent *ad valorem* and Riscossa—0.37 percent *ad valorem.*

2. Fiscalizzazione Benefits

Delverde/Tamma and Riscossa received the higher levels of fiscalizzazione deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred regionally-specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.07 percent *ad valorem* and Riscossa—0.21 percent *ad valorem.*

3. Law 407/90 Benefits

Delverde/Tamma received the higher level of Law 407 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred regionally specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidies for this program remains unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma—0.00 percent *ad valorem*.

4. Law 863 Benefits

Delverde/Tamma received the higher level of Law 863 deductions available to companies located in the Mezzogiorno during the POR. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred regionally specific countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Delverde/Tamma 0.17 percent *ad valorem*.

E. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

Fabianelli obtained export credit insurance under this program for its exports to the United States and, therefore, was exempted from the insurance tax. In the *Preliminary Results* and *Pasta from Italy*, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change our findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the *Preliminary Results* and is as follows: Fabianelli—0.03 percent *ad valorem*.

F. European Social Fund

The European Social Fund (''ESF''), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise workers' standards of living throughout the European Community by increasing their employability. There are six different objectives identified by the Structural Funds: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, Objective 5 pertains to agricultural areas, and Objective 6 pertains to regions with very low population (i.e., the far north).

During the POI, Audisio received an ESF training grant under Objective 4 for the purpose of training its workers to increase productivity.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. See *Pasta From Italy* 61 FR at 30294. Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we determine that this ESF grant relieves Audisio of obligations it would have otherwise incurred. Consequently, the ESF grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the ESF funding under Objective 4 separately from any funding under other objectives. See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Italy* 63 FR 40474, 40487 (July 29, 1998) *(Wire Rod from Italy)*.

In this case, the Objective 4 grant received by Audisio emanated from a regional operational program, which had been set up pursuant to the Single Programming Document for Italy, negotiated by the EU, the GOI and Italian regional authorities. The funding for this regional operational program came from the EU, the GOI and the regional government of Piedmont. For the reasons set forth in *Wire Rod from Italy*, we have examined each level separately to determine specificity.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion of the funding is *de jure* specific because its availability is limited on a regional basis within the EU. In this regard, although Objective 4 funding is available throughout the Member States, the EU negotiates a separate programming document to govern the implementation and administration of the program with each Member State. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). See *Wire Rod from Italy* 63 FR at 40487. The specificity of the regional funding, meanwhile, has been a *de facto* issue.

Audisio argues that all of the Objective 4 agreements negotiated between the EU and Member States should be considered together. If this were done, according to Audisio, the Department by its own admission would arguably be unable to determine that the program is *de jure* specific at the EU level. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy* 64 FR 15508, 15517 (March 31, 1999) *(Plate from Italy)*.

While we agree with Audisio that it may be appropriate for the Department to revisit its decision in *Wire Rod from Italy* on this issue, this is not the case to do it in. Given the lack of information on the use of Objective 4 funds by the EU, the GOI or the Piedmont regional government, we must base the specificity determination on facts available. In addition, we determine that it is appropriate to use adverse facts available because, in our view, information on the distribution of benefits by industry and by region could have been provided given a reasonable effort by the GOI and the Piedmont regional government to do so. *See* 19 U.S.C. 1677e(b). The EU and the GOI stated that they were unable to provide the Department with the industry and region distribution information for each Objective 4 grant in Italy despite requests in our original questionnaire and a supplementary questionnaire. In addition, while the GOI provided a list of grantees that received funds under the multiregional operating programs in non-Objective 1 regions, it did not identify the industry and region of such grantees. Although this information may not have been on file with the GOI, it was, in our view, information that was readily accessible to the GOI and could have been provided to us given a reasonable effort on the part of the GOI. Furthermore, the regional government similarly refused to cooperate to the best of its ability in this investigation despite Department requests. In its supplementary questionnaire response, the Piedmont regional government simply indicated that certain information was on file at its offices and that we could review this information during verification. The regional government made no effort to provide the information as requested.

Therefore, as adverse facts available, we continue to find that the aid received by Audisio is specific. Accordingly, we determine that the ESF grants received by Audisio are countervailable within the meaning of section 771(5) of the Act.

The Department normally considers the benefits from worker training programs to be recurring. See *GIA* 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy* 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for

Audisio's project was less than 0.5 percent of Audisio's sales in the year of receipt, which was the POI, we have expensed the grant received in the year of receipt. To calculate the benefit from Audisio's ESF grant, we divided the grant amount by total sales in the POR because the grant benefitted sales of all of the company's products. On this basis, we calculated a benefit of 0.04 percent *ad valorem*.

G. Export Restitution Payments

Delverde/Tamma, Fabianelli, Audisio and Riscossa received export restitution payments during the POR on shipments of subject merchandise to the United States. In the *Preliminary Results* and *Pasta from Italy,* we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for this program remain unchanged from the *Preliminary Results* and are as follows: Delverde/Tamma 0.22 percent *ad valorem,* Audisio—1.03 percent *ad valorem,* Riscossa—0.81 percent *ad valorem* and Fabianelli—0.42 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

In the *Preliminary Results,* we determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs during the POR:

A. Local Income Tax (''ILOR'') Exemptions
B. VAT Reductions
C. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
D. Export Credits Under Law 227/77
E. Capital Grants Under Law 675/77
F. Retraining Grants Under Law 675/77
G. Interest Contributions on Bank Loans Under Law 675/77
H. Interest Grants Financed by IRI Bonds
I. Preferential Financing for Export Promotion Under Law 394/81
J. Corporate Income Tax (''IRPEG'') Exemptions
K. Urban Redevelopment Under Law 181
L. Debt Consolidation Law 341/95
M. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (''PRISMA'')
N. European Agricultural Guidance and Guarantee Fund (''EAGGF'')
O. European Regional Development Fund (''ERDF'')

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1

Petitioners claim that ESF aid provided to Audisio is de jure specific within the meaning of section 771(5A)(D)(iv) because it is limited to enterprises in certain regions. In *Wire Rod from Italy* at 40474 the Department determined that ESF aid was *de jure* specific because the European Union (''EU'') negotiates a separate program document with each Member State and because GOI funding of Objective 4 projects is available only in central and northern Italy.

Further, petitioners claim that Objective 4 aid is *de facto* specific because the GOI and the EU have failed to provide information on the distribution of Objective 4 benefits by industry and by region.

Audisio claims that the Department indicated in *Plate from Italy* at 15517 that it is appropriate to consider all the Member States of the European Union together and that, therefore, the Department is ''unable to determine that the program is *de jure* specific.'' Additionally, Audisio, the EU and the GOI have provided sufficient evidence for the Department to determine that the ESF funding received by Audisio during this review was not *de facto* specific.

DOC Position

We agree with Audisio that it may be appropriate for the Department to revisit its previous decision in *Wire Rod from Italy* regarding the *de jure* specificity of assistance distributed under the ESF Objective 4 Single Programming Document in Italy, as explained in *Plate from Italy.* However the EU, the GOI and the Piedmont Regional Government failed to provide a breakdown of the number of companies by industry and by region, which received ESF Objective 4 benefits in 1996 and each of the previous three years. In addition, they failed to provide information on the amount of benefits received by industry and by region in 1996 and each of the previous three years. The three governments stated that this information was not maintained by the administering agencies because region of the country and type of industry were not taken into consideration in awarding ESF Objective 4 grants. As explained above, however, in our view the information was readily accessible and could have been provided to the Department given a reasonable effort on the part of the administering agencies. For these reasons, we have found that the three governments did not act to the best of their ability to comply with our information requests and, on the basis of adverse facts available, have determined that the ESF Objective 4 aid is *de facto* specific.

Comment 2

Petitioners claim that the ''separately incorporated'' test used by the Department in *Pasta from Italy* to determine whether subsidies to the mills should be attributed to the production of pasta elevates form over substance. In *Pasta from Italy,* the Department attributed subsidies received by semolina mills not only to semolina but also to pasta in those instances where the mills and the pasta factories were owned and operated by a single corporation. Where the mills and pasta factories were owned by affiliated but separately incorporated companies, however, the Department determined that it would not consider subsidies to mills absent the filing of an upstream subsidy allegation.

Petitioners further claim that the recently published substantive countervailing duty regulations reflect a change in the Department's policy in this regard. Petitioners quote from the preamble to section 351.525(b) of the new regulations which states that ''where the input and downstream production takes place in separately incorporated companies with cross-ownership * * * and the production of the input product is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations).'' (*See Countervailing Duties: Final Rule,* 63 FR 65,401.)

Petitioners claim that Tamma/Delverde meet the cross-ownership provision and that subsidies to Tamma's mill should be attributed to both Tamma and Delverde.

Delverde claims that the Department has consistently included Law 64 grants benefitting Tamma's semolina mill in its calculation of the Delverde/Tamma subsidy rate. The Department has ''collapsed'' the two companies since the original investigation. *See Pasta from Italy.* Consequently, the Department has in each of the previous proceedings attributed to Delverde subsidies that benefitted Tamma's semolina mill. The Department has done so on the basis of the fact that

Tamma's semolina mill is not separately incorporated. It is simply an operating unit of the Tamma corporation.

DOC Position

We agree with Delverde. In *Pasta from Italy,* we did not countervail subsidies to affiliated mills that were separately incorporated, indicating that we would not consider such subsidies absent an upstream allegation. However, in Delverde's case, the Department collapsed Delverde and Tamma treating the two as one company because of stock ownership between the companies and common board members. Moreover, because Tamma's mill was not separately incorporated from Tamma's pasta production operation, subsidies to Tamma's mill were included as subsidies to Tamma's pasta. As a result, subsidies to Tamma's mill were viewed as benefitting both Tamma and Delverde and were allocated over the combined sales of both companies excluding intercompany sales. In both the preliminary and final results of this review, we have done the same.

Comment 3

Petitioners claim that there is no evidence on the record of this review regarding the countervailability or non-countervailability of Sabatini benefits to companies in northern Italy. In *Pasta from Italy,* the Department found that Sabatini benefits to companies in the North were widely distributed by industry and by region and, therefore, were not specific. Petitioners argue, however, that the finding in the original investigation that Sabatini benefits in northern Italy were not specific is insufficient to support such a finding in later periods. In addition, petitioners claim that it is unfair for the Department to require them to provide information indicating that Sabatini benefits in the North may no longer be provided on a non-specific basis before the Department will again examine the question of specificity. Petitioners maintain that the GOI is in the best position to provide the relevant information and because it has not done so, the Department should countervail Sabatini benefits received by companies in the North.

Fabianelli claims that it does not qualify for the special concessionary rate available to companies in southern Italy because its only production facilities are located in Castiglion Fiorentino, which is not in the southern Italy. Further, Fabianelli claims that the Department did not refer to the Sabatini Law in its *Preliminary Results* because benefits to companies in the North are no longer an issue.

DOC Position

In the original investigation, Sabatini Law benefits were found to be widely distributed and to benefit many companies representing a broad cross section of industries throughout Italy. In the original investigation, we found that during the years 1988 through 1993, assistance under the program was distributed over 19 sectors and that benefits to the food producing industry amounted to only 4.9 percent of all benefits granted, which did not represent a disproportionately large share of benefits. Given this compelling evidence of non-specificity of benefits to pasta production, the Department sees no reason to re-open the question of specificity absent information that changes have occurred. The Department has consistently followed this practice regarding programs previously found not countervailable. *See, e.g., Preliminary Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Belgium,* 57 FR 57750, 57758 (December 7, 1992) and *Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia,* 56 FR 67276, 67280 (December 30, 1991).

Comment 4

Delverde maintains that the change of ownership provision contained in the Uruguay Round Agreements Act requires the Department to analyze the facts in each change of ownership situation in order to determine whether and to what extent subsidies received by the original owner are passed through to the new owner. The change of ownership provision recognizes that an arm's length sale of an enterprise or an asset does not require a determination by the Department that a past countervailable subsidy received by the enterprise no longer continues to be countervailable. However, the change in ownership provision plainly does not preclude such a conclusion. For this reason, the Department must carefully analyze the facts of each change of ownership situation.

According to Delverde, the Department's ''privatization/restructuring'' methodology as described in the GIA does not provide for an analysis of the facts of each change of ownership separately and on its own merits. Rather, this methodology presumes as a matter of law that subsidies travel from the seller to the buyer in all circumstances. Only the amount of the subsidies that passes through varies as determined by the gamma calculation depending on the facts in each case.

In Delverde's view careful analysis of the facts in this case will show that the preliminary results in this administrative review fail to meet the post-URAA requirement that the Department find both a financial contribution to and a benefit conferred on current production. Delverde purchased MI.BI in an arm's length transaction at a purchase price established by an independent, court-ordered appraiser. Consequently, prior subsidies received by MI.BA did not benefit Delverde; they simply increased the profit realized by MI.BA upon the sale of its pasta factory.

Petitioners claim that the change in ownership provision contained in section 251(a) of the URAA, amending section 771(5) of the Tariff Act of 1930, reiterated and formally codified the Department's practice, affirmed by the CAFC on no less than five occasions, that an arm's length sale of a firm or asset does not automatically extinguish previously bestowed countervailable subsidies. (*See, e.g, Saarstahl AG* v. *United States,* 78 F. 3d 1539, 1544 (Fed. Cir. 1996)).

In addition, according to petitioners, the URAA statutory definitions of ''benefit'' and ''financial contribution'' do not require any different agency scrutiny or lead to any different conclusions in examining the countervailability of subsidies following a change of ownership than was true under pre-URAA law. This is clear from the SAA's plain statement that this benefit standard merely reflects the longstanding Commerce standard and does not inject a new requirement into the law. (*See* SAA at 925–928.) Petitioners claim that Delverde is seeking to superimpose on the statute the requirement that there be a beneficial competitive effect on the acquiring company's operations when the change in ownership occurred as a result of the original subsidy. This ''effect'' requirement, however, has been rejected by the Court in pre-URAA cases and the new statute expressly states that no beneficial ''effect'' of a subsidy is required. (*See* 19 U.S.C. 1677(5)(C)).

DOC Position

We agree with petitioners. The arguments which Delverde raises in this comment are addressed fully in the remand determination which the Department filed with the CIT on April 2, 1998 in *Delverde, Srl.* v. *United States,* Consol. Ct. No. 96–08–01997. The CIT later sustained that remand determination and upheld the

Department's methodology in *Delverde, Srl.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

Comment 5

Riscossa claims that in calculating the benefit from two Law 64 grants received by the company, the Department incorrectly countervailed the full amount of the benefit received under Law 64 including both the grant amount and the reduction in interest according to the terms of the lease. Riscossa claims that the benefit from the interest rate reduction has expired because the leases in question are no longer outstanding.

Petitioners claim that in both the original investigation and the *Preliminary Results,* the Department correctly treated the Law 64 lump-sum contributions to the leasing companies as grants to Riscossa. In its November 9, 1998 questionnaire response, Riscossa describes the contributions as grants to the leasing companies, which had the effect of lowering Riscossa's lease payments. Riscossa had no repayment obligation as a result of these grants as would be the case for a Law 64 loan. Therefore, the Department should not treat these grants as reduced rate loans.

DOC Position

We agree with petitioners. The GOI made lump-sum payments to leasing companies on Riscossa's behalf. We view these payments as grants. Since 1984, the Department has allocated non-recurring grants such as these over a period corresponding to the average useful life of the recipient firm's or the industry's fixed assets. (*See Subsidies Appendix* appended to *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina* 49 FR 18006, 18018). We do not, as Riscossa suggests, look to how the recipient uses the funds received from the government. Therefore, the fact that Riscossa used its grants to reduce its payments under two lease agreements, which have since expired, is not relevant to our calculations. Therefore, as in the original investigation, the Department has allocated the grants over 12 years.

Comment 6

Petitioners claim the Department should use the ABI rate as a benchmark rate for long-term loans. They claim that in the *Preliminary Results,* the Department used an average interest rate reported by the Bank of Italy based on a survey of 114 Italian banks. In addition, petitioners claim that a spread of 2.275 percent should be added to the ABI rate because this has been Department practice in the last three investigations of Italian products. *See Wire Rod from Italy* 63 FR at 40476–40477; *Plate from Italy* 64 FR at 15510–15511; and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from Italy* 64 FR 30624, 30626–30627 (June 8, 1999).

DOC Position

In the *Preliminary Results,* in the section on *Benchmarks for Long-term Loans and Discount Rates,* we explained that we used the average interest rate on medium-and long-term loans as reported by the Bank of Italy based on a survey of 114 banks for our benchmark interest rate. This explanation was not correct. In our calculations, we actually used the ABI rate plus a spread of 2.275 percent as the benchmark interest rate following the practice in the three earlier cases cited above by petitioners. In these final results, we have also used this benchmark in our subsidy calculations and have correctly described it in the *Subsidies Valuation* section of this notice. We also used this benchmark in the first administrative review of the *Pasta from Italy* order because in *Wire Rod from Italy,* based on information obtained during verification, the Department determined that the ABI rate is the most suitable benchmark for long-term financing to Italian companies.

We note that during verification in this review, we obtained information from a commercial bank confirming the fact that the ABI rate was appropriate for establishing a benchmark interest rate. (*See* June 16, 1999 Memorandum to the File: Meeting with Commercial Bank Officers.) In addition, information from the bank officers regarding the typical spread plus charges which are added to the ABI rate served to confirm the spread which was added in calculating a benchmark in the earlier investigations.

The ABI rate for 1997, as reported in our discussion with officers of the commercial bank, was lower than that reported in the Bank of Italy's February 1998 *Economic Bulletin.* The ABI rate in the *Economic Bulletin,* however, corresponded closely with the 1997 lending rates published for Italy in the International Monetary Fund's June 1999 *International Financial Statistics.* Therefore, we used the ABI rate as published in the *Economic Bulletin* plus a spread as the appropriate benchmark interest rate for this review.

Comment 7

Petitioners claim that in its subsidy calculation, the Department has used a longer, company-specific AUL of 15 years to allocate non-recurring subsidies received well before the current period of review. They claim that the 12-year period used in the original investigation should apply to these earlier subsidies.

DOC Response

We have continued to use 12 years as the allocation period for those non-recurring subsidies countervailed in the original investigation. As we explained in the first *Pasta from Italy* review, it is neither reasonable nor practicable to reallocate these subsidies over a different time period. 63 FR 43905, 43906 (August 17, 1998) For all other non-recurring subsidies, however, whether received during the current POR or prior to the current POR, we have used a company-specific AUL for allocation purposes.

As indicated in the section entitled ''Allocation Period,'' the Department is applying the Court's decision in *British Steel II* and calculating company-specific allocation periods based on the average useful life of each respondent's physical assets. Thus, for subsidies not previously allocated over a particular allocation period, we are using company-specific AULs. (*See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France* 64 FR 30774, 30778 (June 8, 1999).)

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below.

AD VALOREM RATES

Producer/exporter	01/01/97 through 12/31/97
Delverde/Tamma	4.05
Audisio Industrie Alimentari di Capitanata S.p.A	1.03
Pastificio Fabianelli S.p.A	0.49
Pastificio Riscossa F.lli Mastromauro SrL	2.13

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above of the f.o.b. invoice prices on all shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate in effect at the time of entry of the subject merchandise and cash deposits must continue to be collected at the previously ordered rate. Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, except Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') (which were excluded from the order during the investigation), at the most recent rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy* (61 FR 38544, July 24, 1996), or those established in *Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review* (63 FR 43905, August 17, 1998), whichever notice provides the most recently published countervailing duty rates for companies not reviewed in this administrative review. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Barilla and Gruppo (which were excluded from the order during the original investigation).

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 9, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21201 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 7, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on certain welded carbon steel pipes and tubes (pipe and tube) and welded carbon steel line pipe (line pipe) from Turkey for the period January 1, 1997 through December 31, 1997 (64 FR 16924). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, the review on pipe and tube covers Yucel Boru ve Profil Endustrisi A.S., and its affiliated companies, Cayirova Boru Sanayi ve Ticaret A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucel Boru Group), and the review on line pipe covers Mannesmann—Sumerbank Boru Endustrisi T.A.S. (Mannesmann). These reviews also cover 21 programs during the period January 1, 1997 through December 31, 1997.

Since the publication of the preliminary results on April 7, 1999 (64 FR 16924), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1999, case briefs were submitted by the Yucel Boru Group, which exported pipe and tube, and Mannesmann, which exported line pipe, to the United States during the review period (respondents). On May 12, 1999, a rebuttal brief was submitted by Maverick Tube Corporation and Wheatland Tube Company (petitioners).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Because these administrative reviews were initiated in April 1998, 19 CFR part 355 is applicable.

Scope of the Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not more than 16 inches, and with a wall thickness of not less than .065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Analysis of Programs

Based upon the responses to our questionnaires and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Pre-Shipment Export Credit

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.84

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	0.19

2. Foreign Exchange Loan Assistance

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. In the preliminary results, we stated that Mannesmann received foreign currency loans that were used for shipments to the United States and Germany. For the denominator, we used the indexed monthly total exports of the subject merchandise to the United States, and the company's total export sales (unindexed) of the subject merchandise to Germany. We subsequently requested the monthly total export sales of the subject merchandise to Germany so that we could index for inflation, as we had indexed sales of subject merchandise to the United States. We have now indexed the monthly total exports of the subject merchandise to the United States and to Germany to account for Turkey's high rate of inflation. *See Preliminary Results,* 64 FR 16924, 16926, where we found that Turkey experienced an inflation rate of 81 percent during the POR. Accordingly, the net subsidies for this program changed from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.00

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	0.58

3. Freight Program

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.00

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	3.43

II. Program Found Not To Confer Subsidies Special Importance Sector Under Investment Allowances

In the preliminary results we found this program did not confer subsidies during the POR. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Resource Utilization Support Fund
B. State Aid for Exports Program
C. Advance Refunds of Tax Savings
D. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
E. Past Performance Related Foreign Currency Export Loans (Eximbank)
F. Export Credit Insurance (Eximbank)
G. Subsidized Turkish Lira Credit Facilities
H. Subsidized Credit for Proportion of Fixed Expenditures
I. Fund Based Credit
J. Investment Allowances (in excess of 30% minimum)
K. Resource Utilization Support Premium
L. Incentive Premium on Domestically Obtained Goods
M. Deduction from Taxable Income for Export Revenues
N. Regional Subsidies
  1. Additional Refunds of VAT (VAT + 10%)
  2. Postponement of VAT on Imported Goods
  3. Land Allocation (GIP)
  4. Taxes, Fees (Duties), Charge Exemption (GIP)

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

IV. Program Found To Be Terminated

In the preliminary results we found the following program to be terminated and that no residual benefits were being provided:

Export Incentive Certificate Customs Duty & Other Tax Exemptions

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Appropriate Benchmark Interest Rates

The Yucel Boru Group argues that the Department's use of monthly-average interest rates is inconsistent with the Department's policies and practices in antidumping cases. They argue that it is the Department's policy, in high inflation economies, to require contemporaneity for measurements that are affected by inflation. In support of their argument, they cite the *Final Determination of Sales at Less than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, (June 14, 1996), in which the Department used daily exchange rates for currency conversion. Therefore, according to the Yucel Boru Group, because currency exchange rates and interest rates reflect the degree of inflation in the economy, they both should be treated the same way under the principle of contemporaneity in antidumping cases, as well as countervailing duty cases, as provided for under 19 CFR 351.415 (Currency Conversion). Thus, they argue that the Department should use, as a benchmark, the weekly short-term interest rates rather than the monthly average short-term interest rates based on a simple average of the weekly figures corresponding for that month.

The Yucel Boru Group also argues that the Department selected the incorrect short-term weekly rates from *The Economist.* Therefore, they argue that if the Department elects to retain the monthly average methodology, the Department should select the correct short-term weekly rates from *The Economist.*

Department's Position: We disagree with the Yucel Boru Group's contention that the Department should use the weekly short-term interest rate rather than the average monthly rate in calculating the benefit from the pre-shipment export credit program. First, the Group is incorrect in equating antidumping duty practice and the currency conversion regulation (351.415) (only applicable in antidumping duty cases) with countervailing duty practice. In antidumping duty cases because we are comparing costs and prices in different markets, contemporaneous comparisons are necessary to ensure that the comparisons are appropriate and not unduly influenced by exchange rate fluctuations. With regard to prices, our regulation on currency conversion effectuates this purpose. *See* 19 CFR 351.415. In countervailing duty cases we are not comparing prices or costs, rather, in choosing a benchmark interest rate, we are determining whether a benefit exists to the extent that the amount a firm pays on a government-provided loan is less than the amount the firm would pay on a comparable commercial loan obtained during the year in which the government-provided loan was given, in accordance with section 771(5)(E(ii) of the Act. If the government-provided loan is a short-term loan, the Department calculates a single, annual average benchmark interest rate, unless short-term interest rates in the country in question fluctuated significantly during the year in question. Because we determine that Turkey continued to experience a high rate of inflation, based on a Wholesale Price Index rate of approximately 81 percent during the POR, we find that using an average monthly rate as the short-term benchmark interest rate sufficiently accounts for such inflation. It has been the Department's practice in countervailing duty cases to use the average monthly interest rate for purposes of deriving a benchmark interest rate in an inflationary economy. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* 61 FR 30366, 30367 (June 14, 1996). In prior countervailing duty reviews of subject merchandise, the Department has consistently used, as the benchmark interest rates, the monthly average interest rates. *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews,* 62 FR 16782,16783 (April 8, 1997) and *Final Results,* 62 FR 43984 (August 18, 1997) (*1995 Pipe and Tubes and Line Pipe*), and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews,* 62 FR 64808, 64809 (December 9, 1997) and *Final Results,* 63 FR 18885 (April 16, 19998) (*1996 Pipes and Tubes and Line Pipe*). Moreover, we note that Mannesmann, the other producer of subject merchandise in the instant reviews, supplied the Department with the monthly average cost of its company-specific borrowing rates during the POR.

We also disagree with the Yucel Boru Group's contention that the Department used the incorrect benchmark interest rate. The Group's contention appears to stem from their argument that interest rate benchmarks should be contemporaneous with when the interest payments are made. As discussed above, in selecting an appropriate benchmark, we are not comparing prices or costs. Instead, we are determining what the interest rate would have been had the company obtained a commercial loan comparable to the government-provided loan. Therefore, the Department bases its benchmark interest rate on the date the government-provided loan is taken out because the interest rate on a comparable commercial loan would have been established at the time the loan is given, and not on the date the interest payment is made, as argued by the Yucel Boru Group. *See 1996 Pipes and Tubes and Line Pipe,* 62 FR 64308, 64809.

Comment 2: Countervailability of Exempted Loan Fees

The Yucel Boru Group argues that the Department's inclusion of loan fees in the benchmark interest rate used to calculate the benefit of the pre-shipment loan program is contrary to both the World Trade Organization (WTO) Agreement and section 771 of the Tariff Act of 1930. Specifically, they argue that while section 771(5)(E)(iii) of the Act and Part V, Article 14(c) of the Agreement on Subsidies and Countervailing Measures (SCM), dealing with loan guarantees, include provisions for adjusting for fees, the statutory provisions addressing loans in section 771(5)(E)(ii) of the Act and part V, Article 14(c) of the SCM contain no such provision with respect to fees incurred on direct loans. Thus, they argue that because the statute and the WTO do not explicitly include a provision for adjusting for fees in the case of loans, the Department should not include fees in benchmark interest rate used to calculate the benefit under the pre-shipment export credit program.

Petitioners counter that the Yucel Boru Group's contention is not tenable. Rather, according to petitioners, the waived fees are export promotion subsidies and are prohibited. Petitioners also counter that the adjustment for loan guarantee fees is necessary to prevent a finding of a subsidy where the net effect of the guarantee transaction provides no interest benefit to the loan recipient. However, the waiver of fees, which would otherwise be applicable to a loan, but for the fact the loan finances export sales, is an export subsidy in its own right. Therefore, to exclude the fee from the benchmark interest rates would ignore the subsidy benefit.

Department's Position: We disagree with the Yucel Boru Group's contention that the Department's inclusion of loan fees in the benchmark interest rate used to calculate the benefit under the pre-shipment export credit program is contrary to law. Although there is no explicit reference to adjusting for fees on direct loans in either Articles 14(b) and 14(c) of the SCM, and sections 771(5)(E)(ii) and 771(5)(E)(iii) of the Act, the Department has interpreted language contained in both provisions as permitting the Department to add exempted fees to benchmark interest rates used to calculate the benefit in appropriate circumstances. Section 771(5)(E)(ii) of the Act defines the benefit in the case of loans as,

> ''* * * [the] difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.''

The Department believes that this interpretation is in compliance with the SCM and the Act because the inclusion of loan fees in the benchmark interest rate to calculate the benefit accurately derives the amount that the recipient would pay on a comparable commercial loan.

While section 351.505 of the Department's regulations are not in effect for the instant reviews, the Preamble restates the Department's practice of using the ''effective interest rate'' rather than the ''nominal interest rate'' because effective interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges or penalties paid in addition to the nominal interest. *See* section 351.505(a)(1); *Preamble to the Regulations,* 63 FR 65362 (November 25, 1998).

As explained in the *Preliminary Results* at 16926, the pre-shipment export credit program allows for the exemption of certain fees that are normally charged on loans, provided that the loans are used in financing exportation and other foreign exchange earning activities. In light of the exemption granted under this program, the only way to determine the amount that the recipient would normally pay on a comparable commercial loan would be to factor in the fees a recipient would incur on this type of transaction. For this reason, consistent with the Department's practice, we compare effective rates rather than nominal rates. *See e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44843 (August 29, 1995) (*Castings from India*).

Comment 4: Measurement of Countervailable Benefit: Earned Versus Receipt Basis

Mannesmann argues that the Department deviated from its long-standing practice of measuring benefits on an earned basis, *i.e.*, on the date of export where the benefit is earned, either as a fixed percentage of the f.o.b. value or as a fixed amount per ton, on a shipment-by-shipment basis, and the exporter knows the total amount of the benefit at the time of export. Mannesmann cites several cases, which they claim demonstrates that the Department has taken this approach even in cases where the benefit was denominated in local currency, in high inflationary economies, and in cases where there were long delays between the date of exportation and the date of actual receipt of the benefit.

They argue that the Department measured the benefits on an earned basis in Brazilian, as well as Mexican cases in the 1980's, a period in which both countries experienced high inflation, although the benefits could not have been known at the time of export because of the ongoing currency devaluations. Further, Mannesmann argues that because the Department is not applying its long-standing practice in the instant case, it is arbitrarily changing its methodology without an explanation, which is contrary to the principle of administrative law.

According to Mannesmann, the fact that the benefit was fixed for a period of time in U.S. dollars before being converted into local currency means that the value of the benefit was more stable during that period in the Turkish case than it was in the Brazilian and Mexican cases. In the Brazilian and Mexican cases, the value of the benefit was converted into local currency at the time of exportation and began immediately to lose value during the period between the date of export and the date of receipt of the benefit because of the effects of inflation. Furthermore, Mannesmann argues that in the Turkish, Brazilian and Mexican cases, the ''real'' value of the benefit that would ultimately be received by the exporters was not known at the time of export. Thus, the benefits from the Freight Rebate program should be measured on the same basis as the Brazilian and Mexican cases.

Mannesmann states that in *1995 Pipe and Tube and Line Pipe,* the Department countervailed benefits received under the Export Performance Credit program on the date they were earned, and not when they were received. Mannesmann argues that despite the Department's attempts to distinguish the Freight Rebate program from the Export Performance Credit program, the two programs were virtually identical. Mannesmann also argues that the exporters did not know, at the time of export, the exact exchange rate that would be used to convert the dollar amount to Turkish Lira (TL) in either program; therefore, the exporters did not know the ''precise'' amount of the benefit in TL on the date of export. On the other hand, they argue that under both programs, the exporters knew the exact U.S. dollar amount of the benefit on the date of export, and the exporters expected to receive the equivalent value in TL at a later date. Therefore, they argue that the price effect and the volume effect of the benefit were exerted at the time of export and not at a later date.

Petitioners counter that the Brazilian cases cited by Mannesmann do not contradict the Department's finding in the instant case. In the Brazilian cases, the respondents knew the exact amount of local currency they would receive as a benefit at the time of exportation. However, in the instant case, the amount of local currency to be received was not known at the time of export. Petitioners also contend that the focus on local currency is critical because this is how the benefit was paid. According to petitioners, in inflationary economies, valuing a benefit at the time it is earned, where conversion from U.S. dollars to local currency will occur at some future date, understates the value of the benefit received. Furthermore, because the conversion to local currency occurred at a future date renders the value of the benefit uncertain at the time it is earned.

Department's Position: The Department has previously addressed the arguments raised by Mannesmann. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18887–88. No new information has been presented that would warrant reconsideration of the Department's prior findings. Our normal practice is to countervail benefits when they affect the firm's cash flow, usually when the company receives the benefit. *See e.g., Ferrochrome from South Africa, Final Results of Countervailing Duty Administrative Review,* 56 FR 33254, 33255 (July 19, 1991) (*Ferrochrome from South Africa*). However, the Department has deviated from its long-standing practice to countervail an export subsidy on the date the benefit is received on an ''earned basis'' where the benefit is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the countervailable subsidy is known at the time of export. *See e.g., Castings from India,* 60 FR at 44844. As stated in *1995 Pipe and Tube and Line Pipe,* and in *1996 Pipe and Tube and Line Pipe,* the exporter could not have known at the time of export the exact amount of the countervailable benefit from the Freight Rebate program because the freight payments were only stated in U.S. dollars per ton, but the benefit was not tied to the U.S. dollar. The Government of Turkey (GRT) did not initially commit to use the exchange rate existing on the date of export. Therefore, because of the high rate of inflation in Turkey, the exporters could not have known the amount of the benefit ultimately to be received at the time of export. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18888. In the Brazilian and Mexican cases cited by Mannesmann, the benefits in these high inflationary economies were paid at the time of export, thus exporters knew with certainty the benefit to be received in the local currency at the time of export. *See e.g., Final Affirmative Countervailing Duty Determinations: Certain Stainless Steel Products from Brazil,* 48 FR 21610, 21612 (May 13, 1983) and *Toy Balloons (Including Punchballs) and Playballs from Mexico: Final Results of Administrative Review of Countervailing Duty Order,* 49 FR 45039, 45040 (November 14, 1984).

We also disagree with Mannesmann's arguments that the Freight Rebate program is indistinguishable from the Export Performance Credit program. We previously determined that the programs are distinguishable. *See 1995 Pipe and Tube and Line Pipe,* 62 FR at 43991, and *1996 Pipe and Tube and Line Pipe,* 63 FR at 18888. Under the Export Performance Credit program, because the value of the benefit was tied to the U.S. dollar, the benefit remained the same in U.S. dollar terms. Therefore, the value of the benefit from the Export Performance Credit program was known at the time of export, and could be calculated on an earned basis.

Comment 5: Policy Considerations for Measurement of Benefits

Mannesmann argues that policy considerations and the Department's Regulations require the Freight Rebate program be countervailed on the date the benefit was earned because the benefits should be countervailed when they will have the greatest potential effect on a company's export volumes or pricing to the United States. Mannesmann states that since the Freight Rebate program was terminated at the end of 1994, there were no longer any incentive for companies to export. Therefore, they argue that because the countervailing duty law is intended to offset export subsidies, it makes little sense for the Department to countervail a benefit once a program has been terminated.

In support of its policy argument, Mannesmann points to section 351.514 of the Department's regulations, which deals with freight charges. Mannesmann states that although this provision relates to domestic freight charges on export shipments, it is instructive in that it specifically recognizes that freight-related benefits should be countervailed on the date that the subsidies were actually used to encourage shipments to the United States. Therefore, they argue that the Department should follow this policy when countervailing benefits from the Freight Rebate program.

Petitioners counter that regardless of whether a countervailable program has been terminated, the Department should not ignore the residual benefits received under the program.

Department's Position: The Department has previously addressed the arguments raised by Mannesmann. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18888. No new information has been presented that would warrant reconsideration of the Department's prior findings. We continue to disagree with Mannesmann's argument that it makes little sense for the Department to countervail a benefit once a program has been terminated. As we stated, under section 771(5)(C), we are not required to consider the potential effect of a subsidy. Moreover, under the Act, a benefit that is contingent upon export is an export subsidy and thus countervailable. *See* Section 771(5A)(B). Finally, under the logic of respondents argument, we could never countervail export subsidies unless the benefit could be measured at the time of shipment. This clearly conflicts with the Act and our long-standing practice to countervail benefits at the time the subsidy affects the company's cash flow, which includes residual benefits from a terminated program. *See e.g., Ferrochrome from South Africa,* 56 FR 33254, 33255 (July 19, 1991).

Mannesmann's citation to section 351.514 is not applicable to the instant reviews. However, Mannesmann's argument that this section of the regulations is instructive is flawed. We previously determined that the Freight Rebate program was a freight bonus, *i.e.*, a benefit contingent upon export. Therefore, we continue to follow our normal practice and countervail this benefit at the time the financial contribution affects the cash flow of the company, which is when the company receives the payment of the subsidy to which it is entitled as a result of prior exportations. *See 1996 Pipe and Tube and Line Pipe,* 63 FR at 18889.

Comment 6: Treatment of Foreign Exchange Difference (Kur Farki)

The Yucel Boru Group argues that the Department's statement that ''we find that foreign exchange differences are not viewed as sales income generated by a company's main operations,'' is contrary to Turkish accounting principles, as well as the Turkish government's own Standard Accounting Plan. The Yucel Boru Group also argues that the Department's quote from Price Waterhouse's publication, *Doing Business in Turkey* (1992, as amended July 31, 1995) that ''the lack of clearly defined commercial accounting principles and the predominance of tax law mean that Turkish law should be treated with extreme caution, and international accounting standards are preferred'' has nothing to do with income classification issues. The Group claims that the same article directly addresses the treatment of exchange gains and losses, and states that ''exchange gains and losses are part of normal trading income and expense to be taken into account when realized.'' Thus, they argue that *kur farki* should be considered as trading revenue for purposes of the denominator of subsidy calculations (total net sales).

The Yucel Boru Group also discusses the Department's treatment of costs, interest expense, and price adjustment in the context of two antidumping cases that involve cost issues, both in a high inflationary economy (Turkey) and a non-high inflationary economy (Germany). The Group argues that in those cases, the Department treated the foreign exchange gain as sales income, and that the Department should do likewise in the instant case.

Petitioners counter that the Yucel Boru Group points to one source cited by the Department. However, the Group does not address the extensive citations the Department provided from other publications regarding the treatment of income obtained from foreign exchange gains and losses. Petitioners also counter that there is overwhelming support in the record that foreign exchange gain or loss is not related to sales activities, and is therefore ''other income.''

Department's Position: The Yucel Boru Group mistakenly argues that the Department excluded foreign exchange gains and losses from the total sales figure used as the denominator for the calculation of the subsidy. However, we note that we used the total sales denominator reported by the companies. In addition, as stated in the preliminary results, the Department departed from how it had treated such gains and losses in earlier reviews of subject merchandise, and in the instant reviews the Department has indexed both the subsidy benefits (numerator) and sales revenue (denominator), as reported in the questionnaire responses. *See Preliminary Results* at 16925–26. Thus, the Group's argument regarding whether foreign exchange gains or losses constitute sales revenue or other income and should be included in the sales denominator is not germane to the Department's calculation of the net subsides in the instant reviews.

The Group's discussion of the antidumping cases also lacks merit. In the instant case, we are examining neither cost issues nor price adjustments. However, as discussed above, to account for high inflation in Turkey, the Department has used indexation in the instant case, as well as in the *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 63 FR 68429, 68435.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy to be as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Yucel Boru Group	0.84

Manufacturer/exporter of line pipe	Rate (percent)
Mannesmann	4.20

We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of each class or kind of merchandise from reviewed companies, entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Reviews, 53 FR 9791.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(7)).

Dated: August 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–21198 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Approval of Minnesota's Lake Superior Coastal Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service.

ACTION: Notice of the National Oceanic and Atmospheric Administration, National Ocean Service's approval of Minnesota's Lake Superior Coastal Program pursuant to the Coastal Zone Management Act of 1972, as amended 16 U.S.C. 1451 et seq.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration, (NOAA) approved Minnesota's Lake Superior Coastal Program (MLSCP) on July 6, 1999, pursuant to the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455 (CZMA). The MLSCP is described in Minnesota's Lake Superior Coastal Program and Final Environmental Impact Statement (P/FEIS) published in June, 1999.

Minnesota is the 33rd state to receive Federal approval of its coastal management program. Minnesota submitted a proposed coastal program to NOAA in July, 1998. Upon reaching a preliminary decision that the program met the requirements of the CZMA, and in order to meet its responsibilities under the National Environmental Policy Act, NOAA published Minnesota's Statement (P/DEIS) for public review on August 7, 1998. NOAA published the P/FEIS including public comments on the P/DEIS and responses to those comments on June 4, 1999. NOAA has also fulfilled its responsibilities under the Endangered Species Act through consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

The MLSCP is the culmination of several years of development by the State of Minnesota, interest groups, the general public, Federal agencies, and in consultation with NOAA. The MLSCP consists of numerous state policies on diverse coastal management issues which are prescribed by statute and other legal mechanisms and made enforceable under state law. The MLSCP will improve the decision making process for determining appropriate coastal land and water uses in light of resource consideration and increase public awareness of coastal resources and processes. The MLSCP will increase long term protection of the state's coastal resources while providing for sustainable economic development.

NOAA approval of the MLSCP makes the state eligible for Federal financial assistance for program administration and enhancement under sections 306, 306A, 308 and 309 of the CZMA (16 U.S.C. 1455, 1455a, 1456a, and 1456b). Minnesota has submitted an application for $652,000 in FY 1999 Federal CZMA funds which are available to it. These funds will generally be used to assist the state in administering the various state and local authorities included in the MLSCP as well as be used to fund local management efforts to sustain ecosystems, sustain coastal communities, and increase public access.

NOAA approval of the MLSCP also makes operational, as of the date of this **Federal Register** Notice, the CZMA Federal consistency requirement with respect to the MLSCP (16 U.S.C. 1456; 15 CFR part 930). Therefore, as of today, direct Federal activities occurring within or outside the Minnesota Coastal

Zone that are reasonably likely to affect any land or water use or natural resources of the Minnesota Coastal Zone must be consistent to the maximum extent practicable with the enforceable policies of the MLSCP. In addition, activities within or outside the Minnesota Coastal Zone requiring a Federal license or permit listed in the P/FEIS, and Federal financial assistance to state agencies and local governments that are reasonably likely to affect any land or water use or natural resource of the Minnesota Coastal Zone must be consistent with the enforceable policies of the MLSCP.

Part V, Chapter 3 of the P/FEIS identifies the enforceable policies of the Minnesota program, Part V, Chapter 6 of the P/FEIS as well as the CZMA regulations at 15 CFR part 930, identifies Federally licensed or permitted activities subject to the Federal consistency requirements and provides specific procedures to be used in the Federal/State coordination process.

ADDRESSES: For further information please contact Neil Christerson at (301) 713–3113, Extension 167; or via fax at (301) 713–4367; or via e-mail at neil.christerson@noaa.gov

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 6, 1999.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 99–21083 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980212037–8142–02; I.D. 080499A]

RIN 0648–AJ87

Fisheries of the Exclusive Economic Zone off Alaska; Prohibited Species Donation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Selection of an authorized distributor.

SUMMARY: NMFS announces the selection of Northwest Food Strategies (NFS) as an authorized distributor for purposes of distributing Pacific salmon to economically disadvantaged individuals under the prohibited species donation (PSD) program. These salmon are caught incidentally during groundfish fishing operations off Alaska. This action is necessary to comply with provisions of the PSD Program.

DATES: Effective August 16, 1999, through August 16, 2002.

ADDRESSES: Copies of the PSD Permit for Salmon may be obtained from the Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–21668, Attn: Lori Gravel. Copies of Amendments 50/50 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). These FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679.

NMFS approved Amendments 26/29 to the BSAI and GOA FMPs, respectively, on July 10, 1996, and implemented a Salmon Donation Program. These amendments were superseded by Amendments 50/50 to the FMPs, which were approved by NMFS on May 6, 1998, and authorize the PSD Program for salmon and Pacific halibut. A final rule implementing Amendments 50/50 was published in the **Federal Register** on June 12, 1998 (63 FR 32144). A full description of, and background information on the PSD Program may be found in the preamble to the proposed rules for Amendments 26/29 and 50/50 (May 16, 1996, 61 FR 24750 and March 4, 1998, 63 FR 10583, respectively).

Regulations at § 679.26 authorize the voluntary distribution of Pacific salmon taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through an authorized distributor. The Regional Administrator, Alaska Region, NMFS (Regional Administrator), may select one or more tax-exempt organizations to be authorized distributors, as defined by § 679.2, based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS must announce the selection of authorized distributor(s) in the **Federal Register** and issue the selected distributor(s) PSD permits.

On June 29, 1999, the Regional Administrator received an application from NFS. This application was submitted to renew an existing PSD permit issued to NFS on August 16, 1996 (August 16, 1996, 61 FR 42591), which authorized the voluntary distribution of Pacific salmon taken incidentally in groundfish trawl fisheries off Alaska through August 16, 1999. The Regional Administrator reviewed the application and determined that it provided the required information and that NFS met the requirements for an authorized distributor. As required by § 679.26(b)(2), the Regional Administrator based his selection on the following criteria:

1. *The number and qualifications of applicants for PSD permits.* As of the date of this notice, only the application from NFS has been received to distribute salmon taken incidentally in the Alaska groundfish trawl fisheries. NFS has been coordinating the distribution of salmon taken incidentally in these fisheries since 1993 under exempted fishing permits and the Salmon Donation Program. NFS employs independent seafood quality control experts to ensure product quality and has received support from cold storage facilities and common carriers servicing the areas where Pacific salmon are donated.

2. *The number of harvesters and the quantity of salmon that applicants can effectively administer.* The number of processors and vessels currently participating in the PSD program administered by NSF include: 4 shoreside processors, 11 catcher/processor vessels, and 47 catcher vessels. According to its application, NFS has the capacity to receive and distribute salmon from as many as 40 processors and their associated catcher vessels. In 1996, 1997, and 1998, NFS processed 102,735 lbs, 212,143 lbs, and 93,751 lbs, respectively, of salmon for distribution under a food bank program. NMFS does not have information to convert accurately these weights to numbers of salmon. Nonetheless, assuming a recovery rate of 30 percent and an average recovered weight of 8 lbs per fish, the above poundages could represent between 39,000 and 88,400 fish.

3. *The anticipated level of salmon incidental catch based on salmon incidental catch from previous years.* During 1997 and 1998, about 118,000 and 128,000 salmon, respectively, were caught incidentally in the BSAI groundfish trawl fisheries. Another 18,500 and 30,000 salmon, respectively, were taken in the GOA trawl fisheries.

4. *The potential number of vessels and processors participating in the groundfish trawl fisheries.* In 1997, about 8 shoreside processors, 59 trawl catcher/processors, 3 motherships, and 113 trawl catcher vessels participated in the BSAI groundfish trawl fisheries. During the same year, about 18 shoreside processors, 29 trawl catcher/processors, and 174 trawl catcher vessels participated in the GOA groundfish trawl fisheries.

This PSD permit is in effect for a 3-year period from the publication date of this notice unless suspended or revoked. It may not be transferred; however it may be renewed following the application procedures in § 679.26.

If the authorized distributor modifies any information on the PSD permit application submitted under § 679.26(b)(1)(xi) or (b)(1)(xiii), the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

This permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in 50 CFR part 679.

Classification

This action is taken under 50 CFR 679.26.

Authority: 16 U.S.C. 773 *et seq.*, 1408 *et seq.*, and 3631 *et seq.*

Dated: August 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21097 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080499C]

Advisory Panels on Billfish and Highly Migratory Species Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for nominations.

SUMMARY: NMFS solicits nominations for the Billfish and Highly Migratory Species (HMS) advisory panels (APs). The purpose of the APs is to assist NMFS in the collection and evaluation of information relevant to the development of management plans, plan amendments, and regulatory amendments for Atlantic billfish and for Atlantic tunas, swordfish, and sharks. The APs include representatives from all interests in HMS fisheries.

DATES: Nominations must be submitted on or before September 13, 1999.

ADDRESSES: Nominations should be submitted by mail to Rebecca Lent, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910, or by fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Alicon Morgan at (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, two Advisory Panels (APs) were established in 1997 to consult with NMFS in the collection and evaluation of information relevant to the development of fishery management plans (FMPs), FMP amendments, and regulatory amendments under the framework provisions for Atlantic billfish and Atlantic tunas, swordfish and sharks. Members of these two APs were selected to serve for approximately 2 years. The HMS AP Statement of Organization, Practices and Procedures (SOPPs) call for half of the AP members to be replaced after 2 years, with the other half being replaced 6 months later. This staggered renewal process was designed to allow for a more gradual adjustment as the AP members are replaced. The HMS AP SOPPs further state that, of the 22 non-federal members of the AP, 8 are representatives of the commercial fisheries for Atlantic HMS, 7 are representatives of the recreational fisheries for Atlantic HMS, 6 are from the academic and environmental community active in the conservation and management of Atlantic HMS, and 1 is from the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Billfish AP SOPPs indicate that the membership term for all members of the Billfish AP expired June 1, 1999. Of the 7 non-federal voting members of the Billfish AP, 4 are representatives of the recreational fisheries for Atlantic HMS, 1 is a representative of commercial fisheries for whom billfish are incidental catch or bycatch, 1 is a representative of the environmental organizations active the conservation and management of Atlantic billfish, and 1 is a representative of the academic community.

Five additional members of the HMS AP include one representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 *ex-officio* participants: 20 representatives of the constituent states and 2 representatives of the constituent interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

Five additional voting members of the Billfish AP include one representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The Billfish AP also includes 23 non-voting members: 20 representatives of the constituent states, 2 representatives of the constituent interstate commissions; the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission; and the chair, or his or her designee, of the U.S. Advisory Committee to ICCAT.

In order to determine which HMS AP members are to be replaced within 2 years and which within 2 1/2 years, NMFS selected every odd-numbered member from an alphabetically ordered list of the original appointees. Nevertheless, NMFS is soliciting nominations for replacing the entire membership of the AP at this time, with some new members to begin their 2-year term on October 11, 1999, and others on April 6, 2000. Selection of AP members will not be limited to those that are nominated.

The following HMS AP members' terms expire October 11, 1999: Recreational representatives - Joe McBride, Ray Bogan, Bob Eakes and Mark Sampson; Commercial representatives - Rich Ruais and Peter Weiss; and academic/environmental representatives: John Dean, Sonja

Fordham, Bob Hueter and John Wingard.

The following HMS AP members' terms expire April 6, 2000: Recreational representatives - Jim Donofrio, Ellen Peel and Bob Zales; Commercial representatives - Nelson Beideman, Russell Hudson, Robert Fitzpatrick, Gail Johnson and Bob Spaeth; academic/environmental representatives - Carl Safina and David Wilmot; and ICCAT representative - John Graves.

All Billfish AP members' terms expired June 1, 1999. NMFS is soliciting nominations for replacing the entire membership of the Billfish AP.

The purpose of the APs is to assist NMFS in the development of FMPs, FMP amendments, and regulatory amendments under the FMP framework provisions for Atlantic billfish and Atlantic tunas, swordfish and sharks. The APs assist NMFS in meeting the requirements of the Magnuson-Stevens Act throughout the FMP development process.

Procedures and Guidelines

Procedures for Selecting Advisory Panel Members

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental and quasi-governmental entities will be considered as members of the AP. Selection of AP members will not be limited to those nominated. Nominations may include current members of the billfish or HMS APs.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. Indication of whether the nomination is for the billfish AP, HMS AP, or both APs;
2. The name of the applicant or nominee and a description of his or her interest in or connection with billfish (for billfish AP) or with one species in particular from among billfish, sharks, swordfish, and tunas (for HMS AP);
3. A statement of background and/or qualifications; and
4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP.

Participants

Nominations will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each interest must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate balance and mix of interests, given the responsibilities of the AP. Criteria for membership include one or more of the following:

1. Experience in the recreational fishing industry involved in catching swordfish, tunas, or sharks;
2. Experience in the commercial fishing industry for HMS;
3. Experience in connected industries (marinas, bait and tackle shops);
4. Experience in the scientific community working with HMS; and
5. Former or current representative of a private, regional, state, national, or international organization representing marine fisheries interests dealing with HMS.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will be unable to compensate participants with monetary support for their labor, as no funds were appropriated to support this activity in fiscal year 1999. Funding for travel costs of AP members is not always available; therefore, AP members may be expected to pay for travel costs related to the AP.

Tentative Schedule

Meetings of the AP will be held twice yearly or more frequently as necessary; the APs will meet jointly every year, in January or in February to review the Annual SAFE Report and to consider future management actions. Upcoming activities include consideration of regulatory amendments under the framework provisions, particularly measures to address bycatch.

Dated: August 10, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21194 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599B]

ICCAT Advisory Committee; Public Meetings; correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; Correction

SUMMARY: In a previous **Federal Register** notice, incorrect dates were given for the fall meeting of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT). This document provides corrected dates for the meeting.

FOR FURTHER INFORMATION CONTACT: David Kerstetter at 301–713–2337 or Kimberly Blankenbeker at 301–713-2276.

SUPPLEMENTARY INFORMATION:

Correction

In the June 7, 1999, issue of the **Federal Register**, on page 30321, in the second column, the first sentence of the seventh paragraph under **SUPPLEMENTARY INFORMATION**, the dates should be corrected to read ''October 24–26, 1999.''

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21095 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081099C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) has scheduled meetings during the month of September 1999.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the meetings.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The Council's Scientific and Statistical Committee will meet by teleconference on Wednesday September 1, 1999 to review the revised analysis of a proposed split of the Bering Sea/Aleutian Islands Pacific cod fixed gear quota between longline and pot gears, and to further discuss

establishing minimum stock size thresholds for groundfish. Public listening sites have been established as follows:

Seattle, WA: Room 2079, Bldg. 4, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE.,

Juneau, AK: NMFS Main Conference Room, #445C, 4th Floor Federal Building, 709 W. 9th Street

Kodiak, AK: Fishermen's Hall, 503 Marine Way

Anchorage, AK: NPFMC Offices, 605 W. 4th Avenue, 3rd Floor

2. A meeting of the Council/Alaska Board of Fisheries Joint Committee will meet September 15–16, 1999, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. The agenda will include:

(a) Alternatives for resolving the fair-start issue.

(b) Review the Joint Protocol.

(c) Examination of the range of cross jurisdictional issues of mutual interest.

3. The Council's Ecosystem Committee will meet September 20, 1999, beginning at 8:30 a.m. at the Alaska Fisheries Science Center, Building 4, room 2079. The agenda includes discussion of following topics:

(a) Analysis of Habitat Areas of Particular Concern

(b) Evaluation of current management with National Research Council Recommendations for Sustainable Fisheries

(c) The Ecosystem-based Fisheries Report

(d) The 1999 Ecosystem Chapter for the Stock Assessment and Fishery Evaluation documents.

4. The Council's Crab Fishery Management Plan Team will meet September 27–28, 1999, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. The meeting will begin at 1:00 p.m. on September 27th.

Agenda subjects will include:

(a) Review Tanner Crab Rebuilding Plan, survey information, and guideline harvest levels.

(b) Prepare and review the annual Stock Assessment and Fishery Evaluation Report.

(c) Review Category 2 and 3 proposals and any amendment proposals received.

(d) Review and discuss management of the Aleutian Islands red king crab fishery.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 11, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–21195 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990730207–9207–01; I.D. 072899B]

RIN 0648–ZA68

New Bedford Harbor Trustee Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for restoration ideas for New Bedford Harbor.

SUMMARY: On behalf of the New Bedford Harbor Trustee Council (Council), NMFS, serving as the Administrative Trustee, announces this request for ideas for projects that will restore natural resources that were injured by the release of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor environment. The Council will evaluate ideas in three major areas: the restoration criteria established by the Council as described in section V.A.2 of this document, the legal requirements for eligibility, and the technical feasibility. The Council will also seek public comment on the ideas received. After receiving public comments, technical, public and other recommendations will be provided to the Council for its consideration in deciding which ideas, if any, be adapted into measures to be implemented.

DATES: The Council will accept project ideas through September 7, 1999.

ADDRESSES: The Council will accept project ideas at the following location: New Bedford Harbor Trustee Council, c/o National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn: Jack Terrill, or New Bedford Harbor Trustee Council, 37 N. Second Street, New Bedford, MA 02740. Comments on the collection-of-information-requirement under the Paperwork Reduction Act can be submitted to the Office of Management and Budget (OMB) at: Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 978–281–9136, or Jack.Terrill@NOAA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

New Bedford Harbor is located in Southeastern Massachusetts at the mouth of the Acushnet River on Buzzards Bay. The communities of Acushnet, Dartmouth, Fairhaven, and New Bedford are adjacent to the harbor. The harbor and river are contaminated with high levels of hazardous materials, including PCBs, and as a consequence are on the U.S. Environmental Protection Agency's (EPA) Superfund National Priorities List. This site is also listed by the Massachusetts Department of Environmental Protection as a priority Tier 1 disposal site. The contamination resulted both directly from discharges into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system into the same bodies of water.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund," 42 U.S.C. 9601 *et seq.*) provides a mechanism for addressing the Nation's hazardous waste sites, allowing states and the Federal Government to sue polluters for the clean-up and restoration of designated sites. CERCLA provides for the designation of "natural resource trustees:" Federal, state, or tribal authorities who represent the public interest in natural resources. Natural resource trustees may seek monetary damages (i.e., compensation) from polluters for injury, destruction, or loss of natural resources resulting from releases of specified hazardous substances. These damages, which are distinct from clean-up costs, must be used by the trustees to "restore, replace, or acquire the equivalent of" (CERCLA) the natural resources that have been injured, after the trustees have approved a restoration plan.

The parties responsible for the New Bedford Harbor discharges were electronics manufacturers who were major users of PCBs from the time their operations commenced in the late 1940s until 1977, when EPA banned the use and manufacture of PCBs. PCBs are human carcinogens that can be introduced to humans through eating contaminated fish and shellfish. PCBs also have adverse effects on such natural resources as shellfish, birds, and higher mammals.

Executive Order 12580 and the National Contingency Plan, which is the implementing regulation for CERCLA, designate the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to be Federal trustees for natural resources. Federal trustees are designated because of their statutory responsibilities for protection and/or management of natural resources or management of federally owned land. In addition, the governor of each state is required to designate a state trustee.

Trustee responsibilities include assessing damages resulting from the release of hazardous substances, pursuing recovery of both damages and costs from the responsible party or parties, and using recovered funds to restore, replace or acquire the equivalent of natural resources that were injured by the release. For the New Bedford Harbor Superfund Site, there are three natural resource trustees on the Council: Department of Commerce (DOC), the Department of the Interior, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated DOC trustee responsibility to NOAA; within NOAA, NMFS has responsibility for natural resource restoration. The Secretary of the Interior has delegated trustee responsibility to the U.S. Fish and Wildlife Service. The Governor of Massachusetts has delegated trustee responsibility to the Secretary of Environmental Affairs.

In 1983, the Federal and state trustees filed complaints against the electronic manufacturers in Federal District Court in Boston alleging causes of action under CERCLA for injuries to natural resources under their trusteeship that had resulted from releases of hazardous substances, including PCBs. The complaints were resolved as of 1992 through settlement agreements with the electronic manufacturers who paid $109 million for (1) cleanup of the harbor, (2) restoration of injured natural resources, and (3) reimbursement of funds already expended. The Council was created as a result of the settlements.

CERCLA defines natural resources to include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies or other resources under the control or management of the Federal or state government. Natural resources within the New Bedford Harbor environment showing documented injury or having a high probability of injury include fish, shellfish, other marine organisms, birds, marine sediment and the water column. The fish species include winter flounder, tautog, scup, mackerel, silverside, mummichog, and American eels and herring. Shellfish injured by the release of PCBs include mussels, clams, quahogs, oysters, various species of crabs and lobster. PCB contamination also affected other organisms such as amphipods, diatoms and copepods that are part of the food chain and are a means for further transmission of PCBs.

The Council issued an initial ''Request for Restoration Ideas'' in October 1995 (60 FR 52164, October 5, 1995)(the first round). Fifty-six ideas were received from the local communities, members of the public, academia, and state and Federal agencies. The ideas were the basis for the alternatives listed in the Council's ''Restoration Plan for the New Bedford Harbor Environment'' (Restoration Plan) that was developed to guide the Council's restoration efforts. An environmental impact statement was prepared in conjunction with the Restoration Plan to fulfill requirements of the National Environmental Policy Act. A record of decision was issued on September 22, 1998, for both the Restoration Plan and the environmental impact statement. The issuance of the record of decision allowed the implementation of 11 preferred restoration projects analyzed in the Restoration Plan.

The Restoration Plan also identifies an ''event based'' process that allows the Council to proceed with additional restoration activities as more information on EPA's remediation becomes available or as portions of the harbor remediation are completed. Because EPA has issued the ''Record of Decision for the Upper and Lower Harbor Operable Unit'' (September 25, 1998), which describes the methods and actions EPA will undertake to clean up the site, the Council now believes it is appropriate to issue another request for restoration ideas (the second round).

II. Guidance For Development of Natural Resource Project Proposals

Following the conclusion of the first round of funding for restoration projects, members of the public requested further information regarding potential project proposals to be submitted to the Council for consideration in the second round, particularly potential water quality projects such as sewer and septic related construction projects. At its May 7, 1999 meeting, the Council provided the following legal guidelines to be considered during development of restoration project proposals to be submitted to the Council for funding from the New Bedford Harbor Natural Resource Damages Restoration Trust Fund. In addition to these legal guidelines, the Council must also consider restoration requirements (see V.A.2 of this document). Please understand that this summary cannot provide a complete explanation of everything that the Council may consider in evaluating proposed projects and that the following summary does not constitute an official rule, regulation, or law.

Further, it is important to note that a project's consistency with these legal guidelines does not guarantee that it will be funded, but merely establishes that the Council will/may consider the project for possible funding. Conversely, rejection of a proposed project based upon the legal guidelines means that the Council will not use natural resource damage settlement funds for that project, even though the proposed project may yield a restoration benefit to an injured natural resource.

(1) The Council may fund a restoration project only if the primary purpose of the project is to, in a manner consistent with the Restoration Plan, restore, replace, or acquire the equivalent of a natural resource that was injured by the release of PCBs into the New Bedford Harbor environment.

The primary purpose of a project must be the restoration of an injured natural resource or the services that the resource provided to a condition comparable to that which would have existed in the absence of the release of PCBs into the harbor environment.[1] The Council will not select a proposed project for funding if the restoration benefit to the injured natural resource or to its related services is only incidental to the objective of the project. For example, although a proposed project may provide an incidental restoration benefit to an injured resource, the Council will not fund it if its cost is disproportionate to or exceeds the restoration benefit or if its primary purpose appears to be to alleviate financial hardship for one or more private individuals. The Council will consider projects that ameliorate conditions that may limit the effectiveness of any restoration action (for example, the removal of residual sources of contamination) or would accelerate an injured resource's return to its ''baseline condition.''[2] However, the Council may give lower priority to

[1] *See* section 107(f)(1) of CERCLA, 42 U.S.C. 9607.

[2] ''Baseline'' means the condition that would have existed in the area where the natural resources have been affected by the release of hazardous substances had the release not occurred. 43 CFR 11.14.

projects that propose to restore, replace, or acquire the equivalent of injured natural resources by addressing such limiting conditions instead of providing an affirmative restoration benefit to the resource.

(2) The Council has determined that it will not fund a restoration project if there is an independent, prior obligation to perform the project pursuant to statute, regulation, ordinance, consent decree, judgement, court order, permit condition or contract or if otherwise required by Federal, state, or local law.

Please note that this summary cannot cover all possible laws that may apply to a restoration proposal.[3] Specifically, in deciding whether a proposed project regarding water quality is ''otherwise required'', the Council will consider: (1) The legal requirements of the Federal Clean Water Act and the analogous provisions of Massachusetts law; (2) the legal requirements of Title 5, which consists of the Massachusetts regulations governing on-site sewage treatment and disposal, codified at 310 CMR 15.00; and (3) whether the project is otherwise required by Federal, state, or local law, consent decree, judgement, court order, permit condition or contract, or could be required by enforcement of such law, consent decree, judgement, court order, permit condition or contract.

Regardless of whether a governmental agency has elected to exercise its discretion to enforce a provision of law, if a governmental agency has the authority to order certain work (for example, EPA or the Massachusetts Department of Environmental Protection (DEP) has the authority to request a municipality to upgrade a combined sewer overflow or Publicly Owned Treatment Works (POTW) due to an improper point source discharge under the Clean Water Act, or DEP or a local board of health has the authority to order a homeowner to address a failed system under Title 5), then the Council will consider the project to be ''otherwise required'' and not appropriate to be considered for funding. Further, even though a project may not be currently required by an independent prior obligation, the Council will not fund it if there is an established deadline after which such an obligation will exist.

For proposed projects that involve connecting a facility (currently serviced by a Title 5–regulated on-site sewage treatment and disposal system) to a municipal or private sanitary sewer, the project proponent upon request, must provide the Council with adequate documentation that (1) the facility is not the subject of an order or agreement to upgrade its system or connect the system to a sanitary sewer or shared system; (2) no inspection of the system is required pursuant to 310 CMR 15.301 or, if an inspection is required, a currently valid certificate of compliance has been issued for the system by the approving authority; and (3) the system does not fail to protect ''public health and safety and the environment'' pursuant to 310 CMR 15.303 and 304.[4]

For proposed projects covered under the Clean Water Act and involving the treatment or elimination of point source discharges of pollutants to surface waters, including, for example, sewage, industrial wastewater, and/or storm water, the project proponent must demonstrate to the Council upon request and with adequate documentation, that the proposed project goes beyond what is required by applicable National Pollutant Discharge Elimination System permits, enforcement orders and consent decrees. In the case of a discharge for which no permit has been issued, the project proponent must demonstrate, upon request, that the project would go beyond the requirements that would apply to the discharge pursuant to the Clean Water Act, its implementing regulations, and state water quality standards, as well as to any enforcement action which has been initiated. The question of whether a proposed project would result in pollution control beyond Clean Water Act requirements is complex and must be answered on a case-by-case basis.

If, during its review of a proposed project pursuant to this requirement, the Council determines that an ''otherwise required'' issue may exist, the Council will seek further clarification and information from the proponent and/or other governmental entities before making a final determination.

(3) In determining whether a proposed restoration project will be funded, the Council will consider whether the project fits, in terms of the project's costs, with the Council's plan to retain sufficient funds to accomplish meaningful and necessary restoration work after EPA's cleanup is finished.

The Council has not established a definite cap on funding for the second round; however, the Council has decided that it will not expend an amount of funds whose spending would impair its ability to accomplish meaningful restoration following the completion of EPA's remediation. In recognition of this limitation, the Council plans to select a suite of projects that will accomplish restoration priorities and whose total cost is consistent with the Restoration Plan. Project proponents should scale proposals accordingly.

(4) The Council will not fund a restoration project that will be undone or negatively impacted by EPA's future remediation work or that will interfere with any ongoing remediation related work.

Even if the Council's analysis of a proposed project indicates that it will yield a cost-effective restoration benefit to an injured resource, the Council will not fund the project in this round if it will be undone or negatively impacted by EPA's future remediation work. The Council intends to closely coordinate its actions with those of EPA during the development of the remediation plans and to inform the public as to EPA's cleanup schedule so that restoration proposals may be developed accordingly.

Although a proponent may have a general sense of the New Bedford Harbor environment and the injured natural resources sufficient for an initial identification of projects, precise legal meanings of certain terms are provided in the Restoration Plan. Please consult the Restoration Plan prior to submitting a project proposal (for example, see Figure 1.1 in chapter 1 of the Restoration Plan for the meaning of the ''affected'' New Bedford Harbor environment, and chapter 2.1 for definitions of certain terms including ''injury'' and ''natural resources'').

If a municipality proposes a project, the Council suggests that the proposal be reviewed by the municipality's legal counsel prior to submission. In addition, please remember that information submitted to the Council by all parties is included in a public record and is subject to disclosure pursuant to the Federal Freedom of Information Act and the Massachusetts Public Records Law. Please note that, prior to selection of any project for funding, all proposals will be subject to public review and comment as part of an open public comment process.

III. Restoration Priorities

The Council has identified the following list of priorities for restoration of injured natural resources:

1. Marshes and/or wetlands,
2. Recreation areas,

[3] The Council has limited discussion in this section to the Clean Water Act and to Massachusetts Title 5, as interested parties primarily and specifically requested information concerning the effect of those laws on water quality related project ideas.

[4] For purposes of this section, ''facility'' has the meaning as defined by Title 5, 310 CMR 15.002 not as defined by CERCLA.

3. Water column,
4. Habitats,
5. Living resources, and
6. Endangered species.

Project ideas should address these priorities but respondents are not limited to these areas alone. New priorities can be identified, if appropriate, and incorporated into the restoration planning process provided that they meet legal requirements, technical feasibility, and selection criteria.

IV. How to Submit Ideas

This is not a formal solicitation for contract or grant proposals. Instead this is a request for ideas that could eventually lead to contracts or grants. Depending on the activity involved in a project and the project's proponent, the funding award could be a grant, a contract, or, if appropriate, work performed by Federal or state agencies. Please note that the type of submission expected under this solicitation for restoration ideas is significantly different from that for Federal assistance programs.

Respondents are reminded that, once an idea has been submitted, the idea will be made available to the public. Even if the idea is chosen and a solicitation is conducted for accomplishing that idea, there is still no guarantee that the proponent of the idea will be chosen to perform that work. It is possible that an idea may be implemented, after public review (see IV.B.1), through a sole source contract or grant if the idea meets the appropriate criteria for such an award. Because proposals will be subject to public review, respondents who are concerned about revealing proprietary interests or methods should present only enough information to provide the Council with an understanding of the idea.

A. Eligible Submissions

All individuals are eligible to submit ideas, and all submissions are welcomed and encouraged. Respondents are asked to evaluate their idea(s) against criteria developed by the Council in the Restoration Plan (see V.A.2).

Assistance from Council staff is available by telephone or through meetings. Assistance will be limited to such issues as the Council's goals, restoration priorities, selection criteria, application procedures, and responding to questions regarding completion of application forms. Assistance will not be provided for conceptualizing, developing, or structuring proposals. Information can be obtained at the offices of the Council (see ADDRESSES).

B. Duration and Terms of Funding

Direct awards of funding will not occur under this solicitation for restoration ideas. Rather, this solicitation for restoration ideas will result in prioritization of proposed ideas by the Council considering public review and comment. The Council will then determine the most appropriate means of implementing approved project ideas that may or may not require further solicitation.

The Council has a fixed amount of money to implement restoration projects. The cost of the project constitutes an important consideration in determining which project ideas are to be implemented. Estimated cost information allows the Council to develop a spending plan for future years and allows both the public to understand and the Council to determine how many project ideas can actually be funded. In describing the project idea, respondents should consider whether funding would be needed for a single or multiyear basis. This information will in no way affect consideration of the merits of the proposal but instead will assist the Council in its planning.

Since this announcement is only a request for restoration ideas, publication of this request does not obligate the Council to award any specific grant or contract or to obligate any part or the entire amount of funds available.

C. Cost sharing

One way of extending the fixed amount of money the Council has to work with is through cost sharing (often referred to as providing ''matching funds''). It is not required that project ideas contain cost sharing. However, the Council does encourage respondents to think about cost sharing and, if it is appropriate for a project idea, to discuss within the idea the degree to which cost sharing may be possible. If cost sharing is proposed, the respondent is asked to account for both the Council and non-Council amounts. This information will allow the Council to better plan future expenditures.

D. Format

The forms described below are available from the Council's offices (see ADDRESSES) or through the internet at http://www.darp.noaa.gov/neregion/newbed.htm.

1. *Project idea summary*: An applicant must complete ''Request for Restoration Ideas'', Project Summary form, for each project. This form is required in addition to the project narrative described below:

2. *Project idea budget*: Since this is a solicitation of ideas and not a competitive bidding process for work to be performed, a project budget is not required. However, the Council requests that a cost estimate be provided in order to better plan for a proposed allocation of available funds. In determining the estimate for total project cost, the respondent should take into account direct costs, indirect costs, and any cost sharing. Fees or profits should not be included in the estimated budget.

The total costs of the project idea include all costs incurred in accomplishing its objectives during the life of the project.

3. *Project idea narrative description*: The project idea should be completely and accurately described, as follows:

a. *Project idea goals and objectives*: State what the proposed project idea is expected to accomplish.

b. *Project idea statement of work*: Describe the work to be performed that will achieve the Council goals, priorities, and criteria. Include the work, activities, or procedures to be undertaken and the types of individuals expected to perform such work.

c. *Federal, state, and local government activities*: List any Federal, state, or local government programs or activities that this project idea would affect, if known, including activities under Massachusetts Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project idea and these plans or activities.

d. *Project idea evaluation criteria*: Describe how the project idea would address the criteria contained in V.A.2.

V. Evaluation Criteria and Selection Procedures

A. Evaluation of Restoration Project Ideas

1. *Consultation with interested parties*: The Council will evaluate ideas in consultation with Federal trust agencies, Commonwealth of Massachusetts trust agencies, other Federal and state agencies, the Council's advisors, and others outside the Federal and state trust agencies who have knowledge in the subject matter of the project ideas or who would be affected by the project ideas.

2. *Technical evaluation criteria*: The Council will solicit technical evaluations of each project idea from appropriate private and public sector

experts. Point scores will be given to project ideas up to the maximum value shown below, based on the following evaluation criteria:

(a) Project ideas must restore the injured natural resources and associated activities of the area. The idea will be evaluated on whether it restores, replaces, or acquires the equivalent of natural resources that were injured as a result of the release of hazardous materials, including PCBs, in the New Bedford Harbor environment. (25 points)

(b) Priority will be given to project ideas within the New Bedford Harbor environment, however, project ideas within the affected marine ecosystem that have a direct, positive impact on the harbor environment will be considered. Project ideas that are outside the New Bedford Harbor environment will be considered if they restore injured natural resources within the New Bedford Harbor environment. (15 points)

(c) Priority will be given to project ideas that give the largest ecological and economic benefit to the greatest area or greatest number of people affected by the injury. The Council is seeking project ideas that will provide the greatest good. A project idea will be evaluated on the basis of whether it provides positive benefits to a more comprehensive area or population. Project ideas that benefit a particular individual rather than a group of individuals would be scored lower under this criterion. (15 points)

(d) Ecological or economic effects of the project ideas should be identifiable and measurable so that changes to the New Bedford Harbor environment can be documented. The idea will be evaluated on whether it has discrete quantifiable results so that a determination can be made on its success or failure. (10 points)

(e) Preferred project ideas are those that employ proven technologies that have high probabilities of success. In evaluating a project idea, the reviewers will determine the likelihood of success based on the method being proposed. To assist in this evaluation, the respondent should provide information on whether the technique has been used before and whether it has been successful. (10 points)

(f) Project ideas should be cost effective. The justification and allocation of a project's budget in terms of the work to be performed will be evaluated. Project ideas which would result in high implementation costs will be taken into account. (10 points)

(g) Project ideas should enhance the aesthetic surroundings of the harbor environment to the greatest extent possible, while acknowledging the ongoing industrial uses of the harbor. The extent that a project idea recognizes the multiple number of uses and the project idea's impacts on those uses will be evaluated as well as the project idea's ability to enhance the overall beauty of the harbor environment. (5 points)

(h) Project ideas should ultimately enhance the public's ability to use, enjoy, or benefit from the harbor environment. Besides a project idea's success at restoring natural resources, it will be evaluated on the basis of collateral gains in the public's ability to utilize the harbor environment. (5 points)

(i) Project ideas should provide an opportunity for community involvement that should be allowed to continue even after the Council's actions have ended. Project ideas will be evaluated on whether the public can be involved in various facets after the Council has completed its funding and the project is completed. (5 points)

3. *Project idea ranking*: Utilizing the numerical scores resulting from the technical evaluation described at V.A.2., project ideas will be ranked in order of the highest to the lowest score. Project ideas scoring the highest will be considered as ''preliminary preferred'' alternatives, with the other ideas as alternatives. The ranking is used only to provide guidance to the Trustees, but is not controlling. Project ideas that fail to meet criterion (a) may be excluded from further consideration though respondents may be provided other opportunities through later Council solicitations.

B. Selection Procedures and Project Funding

After project ideas have been evaluated and ranked, the review team will develop recommendations for preferred projects. These recommendations will be submitted to the Council which will review the recommendations, accept or modify the recommendations, and make a preliminary determination on the approximate number of project ideas it expects to undertake.

1. *Public review*: Once a preliminary determination is made on the preferred project ideas and on the number of project ideas to be funded, the Council will initiate a 30-day public comment period and hold a public hearing to receive comment on the Council's recommendations.

2. *Trustee Council determination*: At the conclusion of the 30-day comment period, the Council will consider the comments from the public and its advisors before making its final decisions on funding. Factors the Trustees may consider include, but are not limited to, the total cost of the highest ranked projects, the cost of individual projects, the amount available to be spent, and the potential impact of clean up activities on the project.

3. *Project solicitation*: Upon the Council's final decisions, the Council may solicit restoration projects for the selected ideas. If necessary, the solicitation will be a formal request following the appropriate contract or grant procedures. The projects ultimately selected could be awarded to private entities, commercial firms, educational institutions, or local, state, or Federal agencies.

Classification

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB under OMB control number 0648–0302. No person is required to respond to the collection of information unless it displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

The public reporting burden for this collection is 1 hour per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Jack Terrill and OMB (see **ADDRESSES**).

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: August 9, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–21096 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080999C]

Marine Mammals; File No. 495–1524

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that John L. Bengtson, Ph.D., Polar Ecosystems Program Leader, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, has applied in due form for a permit to take Antarctic pinnipeds for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before September 15, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to take six species of pinnipeds: crabeater seals, Weddell seals, leopard seals, Ross seals, southern elephant seals and Antarctic fur seals. The research is part of several integrated projects studying the ecology of Antarctic pack ice seals to better understand the ecological relationships between distributions of pack ice seals and their environment. Animals will be captured, sampled, and instrumented with satellite-linked transmitters.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 9, 1999.

Eugene Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–21098 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67048, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 10, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 17, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
347/348	6,795,766 dozen of which not more than 6,756,378 dozen shall be in Categories 347–W/348–W [2] and not more than 5,120,239 dozen shall be in Category 348–W.
638/639	4,931,644 dozen.
Within Group II Subgroup	
351	1,200,935 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–21115 Filed 8–13–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of new system of records and proposed routine uses.

SUMMARY: This notice adds a new system of records to the Commission's systems of records under the Privacy Act. The new system contains information necessary to collect debts arising from civil monetary penalties and orders of restitution and disgorgement imposed in administrative or injunctive actions. The Commission is proposing that, as a routine use, debt collection records may be forwarded to the Department of the Treasury or the Department of Justice for further collection action.

DATES: Comments on the establishment of the new system of records must be received no later than September 15, 1999. The new system of records will be effective September 27, 1999, unless the Commission receives comments which would result in a contrary determination.

ADDRESSES: Comments should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581. Comments may be sent via electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Stacy Dean Yochum, Office of the Executive Director, (202) 418–5157, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and the Commission's implementing regulations, 17 CFR part 146, the Commission is publishing a description of a new system of records. The new system contains records related to the activities the Commission engages in to collect debts incurred as civil monetary penalties or orders of restitution or disgorgement through administrative or injunctive enforcement actions. The information maintained in the system or records is necessary to collect delinquent debts in accordance with the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, et seq.

This new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Oversight and Reform of the U.S. House of Representatives, the Committee on Governmental Affairs of the U.S. Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated July 15, 1994. Accordingly, the Commission is giving notice of the establishment of the following system of records:

CFTC–42

SYSTEM NAME:

Debt Collection Files.

SYSTEM LOCATION:

Division of Trading and Markets, Three Lafayette Centre, 1155 21st St. NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe a civil monetary penalty to the Commodity Futures Trading Commission or who have not complied with an order of restitution or disgorgement resulting from an administrative or injunctive enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt collection letters and correspondence to and from the debtor and others related to the debt. The files will generally contain information including the name and address of the debtor, the taxpayer's identification number (which may be the social security number); records of each collection made; and notice(s) to the debtor demanding payment and describing the consequences of non-payment. The files may also contain credit reports; reports of asset searches; copies of income tax returns; financial statements reflecting the net worth of the debtor; if applicable, date by which the debt must be referred to the Department of the Treasury or Department of Justice for further collection action; documentation of judgments or liens; and citation or basis on which the debt was terminated or compromised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Including categories of User and the Purpose of Such Uses: In addition to the Commission's ''General Statement of Routine Uses,'' (64 FR 33829), the records regarding the debt and the actions taken to collect the monies may be forwarded to the Department of the Treasury or the Department of Justice for further collection action. Once the records are forwarded to the Department of the Treasury, they are covered by the Treasury/Financial Management Services System 014, Debt Collection Operations. If the records are forwarded to the Department of Justice, they are covered by the Department's system JMD–006, Debt Collection Management System. Information about the delinquent debt may be disclosed to consumer or commercial reporting agencies as required by 31 U.S.C. 3711(e) and 4 CFR part 102. Reporting may be done directly by the Commission or through the Department of the Treasury upon referral of the delinquent debt for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records stored in files; computer database.

RETRIEVABILITY:

Records are retrievable by CFTC docket number and by the name of the debtor.

SAFEGUARDS:

In addition to general building security, paper records are maintained in areas accessible only to authorized personnel. Computer security measures limit access to electronic data.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 6.

SYSTEM MANAGERS AND ADDRESS:

Robert P. Shiner, Assistant Director, Division of Trading and Markets, Three Lafayette Centre, 1155 21st street, NW, Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures,'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures,'' above.

RECORD SOURCE CATEGORIES:

Commission orders, judicial orders, debtors, credit reports from commercial credit bureaus, asset search databases, Department of the Treasury, Department of Justice.

Issued in Washington, DC on August 10, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–21202 Filed 8–15–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership Change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is given that the following employees will serve as members of the Commission's Performance Review Board.

Members: Donald L. Tendick, Acting Executive Director, Office of the Executive Director; Phyllis Cela, Acting Director, Division of Enforcement; I. Michael Greenberger, Director, Division of Trading and Markets; David R. Merrill, Acting General Counsel, Office of the General Counsel; John R. Mielke, Acting Director, Division of Economic Analysis.

DATES: This action will be effective on August 10, 1999.

ADDRESSES: Commodity Futures Trading Commission, Office of Human Resources, Three Lafayette Centre, Suite 4100, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo, Director, Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, Suite 400, Washington, DC 20581, (202) 418–5003.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, June 7, 1999.

Issued in Washington, DC on August 10, 1999.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 99–21075 Filed 8–13–99; 8:45 am]

BILLING CODE 6351–01–M

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Update Report for Fiscal Year 2000 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Sequestration Update Report for Fiscal Year 2000* to the House of Representatives, the Senate, and the Office of Management and Budget.

David M. Delquadro,

Assistant Director, Administration and Information Division, Congressional Budget Office.

[FR Doc. 99–21114 Filed 8–13–99; 8:45 am]

BILLING CODE 99–0702–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

The Air University Board of Visitors will hold an open meeting on November 14–17, 1999, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (five seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, (334) 953–5159.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–21186 Filed 8–13–99; 8:45 am]

BILLING CODE 5001–05–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

Time and Date of Meeting: 9:00 a.m., September 9, 1999.

Place: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

Status: Open.

Matters To Be Considered: Status of the Department of Energy's Implementation Plan for Board Recommendation 94–1, The Remediation of Nuclear Materials in the Defense Nuclear Facilities Complex.

Contact Person for More Information: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

Supplementary Information: Recommendation 94–1 has driven the Department of Energy (DOE) to accomplish significant risk reduction and nuclear material stabilization during the past four years. Under the original implementation plan, urgent risks were mitigated and DOE made progress in stabilizing plutonium, special isotopes, and spent nuclear fuel. Additionally, compensatory measures were implemented to ensure safe storage of the remaining materials awaiting stabilization.

However, the Defense Nuclear Facilities Safety Board is concerned about the DOE's rate of progress in implementing the revised Recommendation 94–1 implementation plan, The Remediation of Nuclear Materials in the Defense Nuclear Facilities Complex, received by the Board in December 1998. The Board has not yet received the outstanding plans and schedules required to complete the necessary stabilization activities.

The Board issued Recommendation 94–1 on May 26, 1994 to encourage the Department of Energy to act more quickly to place surplus nuclear materials in safe forms for interim storage. When production of nuclear weapons ceased in the early 1990's, large inventories of plutonium, uranium, spent nuclear fuel, and other hazardous materials were stored in temporary arrangements awaiting processing into weapons components or other disposition. The Board was concerned that such materials, some of which are in unstable chemical forms, may rupture or leak from their temporary containers, or may cause or contribute to accidents, material releases, and radiological exposures. The Board accordingly recommended that the DOE initiate or accelerate programs to process and repackage such materials so that they could be safely stored. The Secretary of Energy accepted Recommendation 94–1 in full, and a mutually agreeable Implementation Plan was issued in February 1995 and accepted by the Board. During 1998, DOE prepared an updated implementation plan that was submitted to the Board in December 1998. In January 1999 the Board conditionally accepted the revised plan provided that the DOE complete planning for all stabilization activities. DOE has not yet provided this supplemental information to the Board's satisfaction.

This public meeting will examine the reasons for delays in finalizing the revised implementation plan and also explore the causes of delays in specific stabilization activities at selected DOE sites. DOE will be requested to identify corrective actions necessary to complete the remaining stabilization activities in a timely manner. Department of Energy personnel will present the status of delayed nuclear material stabilization activities to process uranium, plutonium, and other actinides into stable storage forms, package plutonium for interim storage, stabilize spent fuel, and maintain the facilities needed to perform these activities over the next few years. The largest Recommendation 94–1 programs are at the Savannah River Site, the Hanford Site, the Rocky Flats Environmental Technology Site, and Los Alamos National Laboratory, although most other defense nuclear sites are affected to some degree.

The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: August 11, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–21289 Filed 8–12–99; 11:40 am]

BILLING CODE 3670–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 1, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/ Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation on the ''Draft Environmental Sampling Plan for the Scarboro Community, Oak Ridge, Tennessee'' provided by Ms. Camilla Warren, Environmental Protection Agency, Region 4.

2. Public Comment.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on August 10, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–21120 Filed 8–13–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–899–003; ER98–1923–002]

California Independent System Operator Corporation; Notice of Filing

August 10, 1999.

Take notice that on July 27, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a partial compliance filing as required by the Letter Order issued by the Commission on May 28, 1998.

Copies of the filing have been served upon each person designated on the official service list.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21121 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–417–001]

Canyon Creek Compression Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Canyon Creek Compression Company (Canyon), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fourth Revised Sheet No. 104
Substitute Second Revised Sheet No. 121A
Substitute Fifth Revised Sheet No. 193

Canyon states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–417–000.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Canyon states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–417.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21132 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–382–001]

Garden Banks Gas Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1999.

Take notice that on July 29, 1999, Garden Banks Gas Pipeline Company, LLC (GBGP), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposal to become effective August 1, 1999:

Sub Sixth Revised Sheet No. 136
Sub Original Sheet No. 137

GBGP states that the purpose of this filing is to comply with the Letter Order issued July 26, 1999 in Docket No. RP99–382–000 whereby GBGP was directed to reflect Version 1.3 standards for all standards and definitions. The tariff sheets filed herein reflect Version 1.3 for all standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21125 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–395–001]

MIGC, Inc.; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets with a proposed effective date of August 1, 1999.

MIGC states that the purpose of the filing is to comply with a Letter Order dated July 22, 1999 related to Order No. 587–K issued in Docket No. RM96–1–011.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21126 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–416–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Sixth Revised Sheet No. 409.

Natural states that this filing is being submitted to reflect a correction to its Order No. 587–K compliance filing submitted on July 1, 1999 at Docket No. RP99–416–000. Natural states that this submittal reflects the inclusion of GISB Standards 1.1.15, 1.2.6 and 1.3.26 which were inadvertently eliminated in its filing on July 1, 1999 in this proceeding.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit Substitute Sixth Revised Sheet No. 409 to become effective August 1, 1999.

Natural states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–416.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21131 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–56–000]

Northbrook New York, LLC; Notice of Filing

August 9, 1999.

Take notice that on August 2, 1999, Northbrook New York, LLC, a Delaware limited liability company (Northbrook), petitioned the Commission under section 204 of the Federal Power Act for the granting of blanket approval to issue securities and a waiver of Commission regulations with respect to the competitive bidding and negotiated placement requirements of 18 CFR 34.2. In the alternative, Northbrook requests approval for the issuance of $20 million in debt, approval to issue membership interests, and an exemption from the competitive bidding and negotiated placement requirements of 18 CFR 34.2. Northbrook seeks such authorizations and waivers in order to issue securities to finance the acquisition of a 33 MW (net) hydroelectric facility known as Glen Park Hydroelectric Project, Glen Park, Jefferson County, New York, FERC Project No. 4796.

Northbrook is exclusively engaged in the acquisition, ownership and operation of the Glen Park Hydroelectric Project. Northbrook is owned 50% by Omega Energy, LLC., and 50% by NEO Corporation. NEO Corporation is an indirect subsidiary of Northern States Power Company, a Minnesota electric utility company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such motions and protests should be filed on or before August 27, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21136 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4281–008; Docket No. ER99–3996–000; Docket No. ER99–3997–000; Docket No. ER99–3998–000; and Docket No. ER99–3999–000]

NRG Power Marketing, Inc., et al; Notice of Filings

August 9, 1999.

Take notice that on July 30, 1999, NRG Power Marketing, Inc. (NRG–PM), Dunkirk Power LLC, Astoria Gas Turbine Power LLC, Authur Kill Power LLC and Huntely Power LLC, tendered for filing for transactions during the calendar quarter ending June 30, 1999 under its Market-Based Rate Tariff.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21134 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

August 10, 1999.

Take notice that the Commission staff will hold a public meeting with Pacific Gas & Electric Company (PG&E) the applicant for the Mokelumne Hydroelectric Project No. 137, the U.S. Forest Service, and other interested parties participating in a collaborative process to develop an agreement on streamflow issues in the Mokelumne relicensing proceeding.

The meeting will be held on Wednesday, August 25, 1999, and Thursday, August 26, 1999, from 9:00 a.m. to 4:00 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security. All interested persons are invited to attend the meeting.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21123 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–399–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 6, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Eight Revised Sheet No. 52, Fourth Revised Sheet No. 53, Fifth Revised Sheet No. 54, Fourth Revised Sheet No. 54A, First Revised Sheet No. 54B, Fifth Revised Sheet No. 81A.06, and Substitute Sixth Revised Sheet No. 144, with an effective date of August 1, 1999.

PG&E GT–NW states that these tariff sheets are filed in compliance with the Commission's July 29, 1999 Letter Order in docket No. RP99–399–000.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, interested state regulatory agencies and all parties on the Commission's official service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21127 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–465–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 10, 1999.

Take notice that on August 6, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, third Revised Sheet No. 139. PG&E GT–NW requests that the above-referenced tariff sheet become effective September 6, 1999.

PG&E GT–NW asserts that the purpose of this filing is to define the types of conforming discount PG&E GT–NW and Shippers may agree to under PG&E GT–NW's tariff.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21133 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–102–000]

Sonat Energy Services Company, AGL Power Services, Inc. and Sonat Power Marketing L.P.; Notice of Filing

August 9, 1999.

Take notice that on August 2, 1999, Sonat Energy Services Company (SES) and AGL Power Services, Inc., (AGLPS), tendered for filing an application under Section 203 for approval of a transaction whereby SES will acquire AGLPS' interest in Sonat Power Marketing L.P. (SPMLP). Under the proposed transaction SPMLP will become a wholly-owned subsidiary of SES.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21137 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL99–74–000 and ER99–3965–000]

Southwestern Public Service Company v. El Paso Electric Company; Notice of Filing

August 10, 1999.

Take notice that on July 26, 1999, El Paso Electric Company (EPE), and Southwestern Public Service Company (SPS), and tendered for filing a Settlement Agreement, an Explanatory Statement in support of the Settlement Agreement and an agreement to EPE to provide specified amounts of monthly firm transmission service to SPS.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21122 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–415–001]

Stingray Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Stingray Pipeline Company (Stingray), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fifth Revised Sheet No. 104
Substitute Second Revised Sheet No. 119A
Substitute Fifth Revised Sheet No. 199

Stingray states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–415–000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Stingray states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–415.

Any person desiring to protest this filing should file a protest with the Federal Energy Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protest must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21130 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–412–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 6, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Ninth Revised Sheet No. 412 and Fourth Revised Sheet No. 413. Tennessee requests that the attached tariff sheets be made effective August 1, 1999.

Tennessee states the attached tariff sheets are submitted in compliance with the Commission's July 23, 1999 Letter order (July 23 Order) in Docket No. RP99–412. Tennessee states that in the July 23 Order, the Commission required Tennessee to file revised tariff sheets which (1) separately identifies as Version 1.2 the existing data sets for which an extension of time was grated and (2) incorporates as Version 1.3 Data Set 3.4.4, which Tennessee excluded from its extension request as related to a service which it did not provide. Tennessee further states that the attached revised tariff sheets reflect the required changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21128 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–414–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

August 10, 1999.

Take notice that on August 5, 1999, Trailblazer Pipeline Company (Trailblazer), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fifth Revised Sheet No. 104
Substitute Second Revised Sheet No. 124A
Substitute Sixth Revised Sheet No. 203

Trailblazer states that these tariff sheets were filed in compliance with the Commission's Letter Order issued on July 23, 1999, at Docket No. RP99–414–000.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Trailblazer states that copies of the filing are being mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–414.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21129 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–340–001]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 10, 1999.

Take notice that on august 5, 1999, TransColorado Gas Transmission Company (TransColorado), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Sixth Revised Sheet No. 203
Substitute Third Revised Sheet No. 203.01

TransColorado states that the filing is being made in compliance with the Commission's July 22, 1999, letter order in Docket No. RP99–340–000.

In the July 22 order, the Commission accepted tariff sheets to be effective, subject to TransColorado revising its tariff sheets within 15 days of the order as required by the Commission's directives to reflect the deletion of GISB Standard 4.3.4, which was not adopted by the commission. In addition all standards have been changed to be identified as Version 1.3 even if the standards themselves have not changed.

TransColorado states that a copy of this filing has been served upon its customers, the Colorado Public Utilities Commission and the New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21124 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–58–000]

UtiliCorp United Inc.; Notice of Application

August 9, 1999.

Take notice that on August 4, 1999, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue, from time to time during a two-year period, unsecured notes and other obligations, including financial guarantees of securities issued by subsidiaries and affiliates up to and including $500,000,000, in the aggregate at any one time outstanding, for periods of time not exceeding twelve months after issuance.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 27, 1999. Protests will be considered in by Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–21135 Filed 8–13–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6421–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; See List of ICRs Planned To Be Submitted in Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before October 15, 1999.

ADDRESSES: U.S. Environmental Protection Agency, Mail code 2223A, OECA/OC/METD, 401 M Street, SW., Washington, D.C. 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

A. List of ICRs Planned to be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following three continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR No 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO2 emissions (40 CFR part 60, subpart LLL); EPA ICR No 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L); EPA ICR No 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

B. Contact Individuals for ICRs

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); Deborah Thomas at (202) 564–5041 or via E-mail at *thomas.deborah@epa.gov;* EPA ICR No. 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO_2 emissions (40 CFR part 60, subpart LLL); Dan Chadwick at (202) 564–7054 or via E-mail at *chadwick.dan@epa.gov*; EPA ICR No. 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L; Maria Malavé at (202) 564–7027 or via E-mail to *malave.maria@epa.gov*. EPA ICR No. 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

Information may also be acquired electronically through the Internet Web site at www.epa.gov/fedrgstr.

C. Individual ICRs

(1) NSPS subpart L; New Source Performance Standards (NSPS) for Secondary Lead Smelters (40 CFR part 60, subpart L); EPA ICR No. 1128.05, OMB Control No. 2060–0080; Expires 01/31/00.

Affected Entities: Entities potentially affected by this action are secondary lead smelters. Specifically, the affected facility in each smelter is any pot furnace of more than 250 kg charging capacity, blast (cupola) furnaces, and reverberatory furnaces.

Abstract: Secondary lead smelters produce elemental lead from scrap, providing the primary means for recycling lead-acid batteries (automotive) into useable products. Currently upwards of 95% of all lead-acid batteries are recycled by these facilities. Secondary lead smelters emit lead and non-lead particulate matter in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these record-keeping and reporting requirements was estimated at 34.5 person-hours. This is based on an estimated 23 respondents. The average annual burden for reporting only is projected to be less than 10 hours. This is because virtually all reporting requirements apply to new facilities only, and no new secondary lead smelters are anticipated over the next three years. There is a chance that some existing facility might need to report a physical or operational change; however, these reports are very rare, and might only involve one facility over the three-year period, with a burden of less than 10 hours.

(2) NSPS subparts KKK and LLL, New Source Performance Standards (NSPS) for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants (40 CFR part 60, subpart KKK) and New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO_2 emissions (40 CFR part 60, subpart LLL); EPA ICR No. 1086.05, OMB Control No. 2060–0120; Expires 01/31/00.

Affected Facilities: Those entities which process natural gas onshore and are subject to NSPS subpart KKK and or NSPS subpart LLL.

Abstract: There are 586 facilities subject to NSPS subpart KKK and 62 subject to NSPS subpart LLL. There is no expected growth rate in the onshore natural gas processing industry. Subpart KKK regulates VOC emissions and subpart LLL regulates SO_2 emissions. In the Administrator's judgement these pollutants cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices and leak detection and repair protocols.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions. Recordkeeping requirements for subpart KKK affected facilities follows a general leak detection program regimen. It consists of inventorying the applicable pumps, pressure relief devices, sampling connections, valves, flanges and compressors; taking note of any leaks found at these pieces of equipment; and recording information regarding repairs. In general, gas leaks are monitored monthly and a visual inspection for liquid leaks is performed weekly.

The initial report for facilities subject to subpart KKK is required to be submitted within six months of affected facility startup. This report shall identify all process units and identify all valves, pumps, and compressors that are subject to the standards. All subsequent reports are due semiannually. These semiannual reports shall include information on applicable valves, pumps, and compressors, including the amount of valves, pumps, and compressors found leaking during the reporting period and information on repair, including the amount of valves, pumps, and compressors that did not have leaks repaired.

Recordkeeping requirements for subpart LLL affected facilities involve recording the measurements and calculations regarding determining initial and continuous SO_2 emission reduction efficiency, and periods of excess emissions must be recorded. Excess emissions are defined as any 24-hour period during which the average sulfur emission reduction efficiency (as measured by operating temperature) is less than the appropriate operating temperature as determined in the performance test. Each 24 hour period must consist of at least 96 temperature measurements equally spaced over the 24 hours. A semiannual report is required for facilities subject to Ssbpart LLL. These reports shall contain information on periods of excess emissions as defined for facilities using sulfur emission reduction efficiency and those using CEMs.

All reports are sent to the delegated state or local authority. In the event that there is no delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standards. The reviewing authority may then inspect the source to check if the required records are being kept and the pollution control devices have been properly installed and are being operated correctly. Performance test reports are needed for SO_2 since they serve as the Agency's record of a source's initial capability to comply with the SO_2 standards, and provide information on the operating conditions under which compliance was achieved. Excess emission reports are submitted for problem identification, as a check on source operation and maintenance, and for compliance determinations.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory. Records of the calculations and measurements required to show applicability and compliance with the standard and compliance with monitoring requirements must be kept for at least 2 years following the date of the measurements. This requirement is also in the general provisions at section 60.7(d). To certify that a facility is exempt from the control requirements of these standards, each owner or operator of a facility with a design capacity less than 2 Long Tons per Day (LT/D) of H_2S in the acid gas shall keep, for the life of the facility, an analysis demonstrating that the facility's design capacity is less than 2 LT/D acid gas. Each owner or operator who elects to comply with section 60.646(e) shall keep, for the life of the facility, a record demonstrating that the facilities design capacity is less than 150 LT/D of H_2S expressed as sulfur.

Burden Statement: The burden for NSPS subpart KKK includes 70 hours to prepare semiannual reports, and 80 hours to file and maintain records of measurements. The total burden hours for NSPS subpart KKK is 31,020. The burden for NSPS subpart LLL includes 16 hours to write the excess emissions report, Two hours to implement activities, 30 min to maintain records of start-up, shut-down, and/or malfunction, 1.5 hours to record the required monitoring measurements, and 2 hours for the capacity data records. The total burden hours for NSPS subpart LLL is 15,012. The total for both subparts combined is 46,032 hours.

(3) MACT subpart L; National Emission Standards for Coke Oven Batteries (40 CFR part 63, subpart L; EPA ICR No 1362.04, OMB Control No. 2060–0253; Expires 12/31/99.

Affected Entities: These standards apply to owners or operators of by-product and non-recovery coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted. It also applies to all batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process. Applicability dates vary depending on the emission limitation the affected facility is subject to.

Abstract: The National Emissions Standards for Coke Oven Batteries were proposed on December 4, 1992 and promulgated on October 27, 1993. Under this rule, all existing batteries must choose a compliance track. Three compliance approaches are available under the rule: the ''MACT (Maximum Achievable Control Technology) track,'' the ''LAER (Lowest Achievable Emission Rate) extension track,'' and straddling both tracks (until January 1, 1998).

Owners or operators of coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted, are required to comply with the following monitoring, recordkeeping and reporting requirements. Monitoring requirements include: daily monitoring of coke oven batteries by a certified observer for each emission point and calculate the 30-run rolling average; daily performance tests for each coke oven battery are needed to determine compliance with the visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations; monitoring of pollution control equipment operation and maintenance (e.g., flare system); and daily inspection of the collecting main for leaks according to Method 303. The recordkeeping requirements include: maintain records of the startup, shutdown, or malfunction plan developed under section 63.310; maintain records of the coke oven emission control work practice plan developed under section 63.306; maintain records of maintenance and inspection on leaks for by-product coke oven batteries; maintain records of daily operating parameters and design characteristics for nonrecovery coke oven batteries; maintain records of bypass/bleeder stack flare system or an approved alternative control device; and maintain records onsite for at least a year. Thereafter records must be accessible within three working days upon the Administrator's request. The reporting requirements include: submit one-time notifications to elect a compliance track and to certify initial compliance; if applicable, respondents also would submit one-time notifications or requests for constructing a new, brownfield, or padup rebuild by-product coke oven battery using a new recovery technology; restarting a cold-idle battery shutdown prior to November 15, 1990; obtaining an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and obtaining an alternative standard for coke oven doors on a battery equipped with a shed; if a malfunction occurred, respondents must notify the enforcement agency and follow up with a written report. A report also would be required if coke oven gas were vented through a bypass/bleeder stack and not flared as required under the rule; report for the venting of coke oven gas other than through a flare system; and submit semiannual compliance certifications.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plant maintains help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly. Specifically, the information and data will be used by EPA and states to: identify batteries subject to the standards; ensure that MACT and LAER are properly applied; and ensure that daily monitoring and work practice requirements are implemented as required. Effective enforcement of the standard is particularly necessary in light of the hazardous nature of coke oven emissions.

Reporting and recordkeeping requirements on the part of the respondent are mandatory under sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Burden Statement: In the previously approved ICR, the recordkeeping and reporting burden were estimated to average $10,740 total annual hours and 306.9 hours per respondent per year. The total annual cost for recordkeeping and reporting was estimated to average $365,626 based on 35 respondents. The estimated operation and maintenance cost documented was $2,364,954 due to the total burden hours associated with monitoring requirements (i.e., 69,469 hours). The burden has been calculated on the basis of estimated hourly rates as follows: technical $35, management $51, and clerical $16. There were no capital and start-up cost since no new sources were expected over the next three years. The total average annual burden to industry over the next three years of the ICR is estimated to be $2,730,580.

Several general assumptions were made for both by-product batteries and nonrecovery batteries in calculating the respondent burden associated with this regulation, as described below. Owners or operators of by-product batteries are required to have daily performance tests for each emission point on each battery conducted by a certified observer provided by the state. Therefore, respondent will reimburse the state through permit fees for all costs associated with daily inspections using the formula provided in the standard. Other indirect costs attributable to respondents would include the cost of observer certification. It was assumed in this analysis that of the 34 by-product recovery plants only 10% would be required to implement the work practice procedures, specified in the work practice plan, which is require following the second independent exceedance of an applicable visible emission limitation for an emission point. It was also assumed in the analysis that 10% of the 34 by-product plants would experience a venting episode where emissions are released through bypass/bleeder stacks without flaring and, therefore, require to submit a notification and written report to EPA. The nonrecovery plants are not required to use a certified observer to monitor the oven pressure to control emissions from coke oven doors. However, nonrecovery plants are subject to work practices for charging operations for which they need to keep records.

Other specific assumptions made in calculating the burden estimate analysis include: (1) One plant per year will submit a notification for construction or reconstruction, use of new recovery technology, and startup of cold-idle batteries; (2) the enforcement agency will receive requests for an alternative door standard; (3) 1 plant would permanently close batteries and would be required to submit a notification; (4) 1 plant will submit a compliance certification, all existing plants have already submitted by the required date initial compliance certifications; (5) all plants will submit semiannual compliance certifications; (6) 20% of the 35 existing plants had initially selected to comply with the LAER extension compliance track or to straddle both the MACT and LAER compliance track, and would have to submit by January 1998 a notification on whether they want to continue this extension track until the end of the allowable period or comply with the 1995 MACT limits and residual risk standards; (7) no requests for an alternative control system would be submitted to the enforcement agency; and (8) 2 of the 35 existing plants may experience malfunction and, therefore are required to submit a notification and a written report to the enforcement agency.

Dated: August 6, 1999.

Ken Gigliello,

Acting Director, Manufacturing Energy, and Transportation Division.

[FR Doc. 99–21167 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6418–4]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300g–2, and 40 CFR part 142, subpart B-Primary Enforcement Responsibility, that the State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Drinking Water Program of the South Dakota Department of Environment and Natural Resources (DENR), has adopted regulations for lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141, subpart I (56 FR 26460–26564, June 7, 1991). The Environmental Protection Agency (EPA) has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWRs. EPA therefore proposes to approve South Dakota's primacy revisions for the Lead and Copper Rule. Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see Indian Country section.

DATES: Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before September 15, 1999. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o Linda Himmelbauer (8P–W–MS), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P–W–MS), 999 18th Street, Suite 500, Denver, Colorado 80202–2466 telephone 303–312–6263.

SUPPLEMENTARY INFORMATION:

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this document, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, EPA will publish a final on the primacy revision. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

Indian Country

EPA has been consulting with the affected Tribes and has had discussions with the State regarding the extent of Indian country in South Dakota. Based on these discussions, we propose the following language. Recognizing that the affected parties may have differing opinions, we invite comment from the Tribes, the State and others.

EPA's decision to approve this primacy revision for the South Dakota PWSS Program does not include any land that is, or becomes after the date of this authorization, ''Indian country,'' as defined in 18 U.S.C. 1151, including:

1. Land within formal Indian reservations located within or abutting the State of South Dakota, including the:
   a. Cheyenne River Indian Reservation,
   b. Crow Creek Indian Reservation,
   c. Flandreau Indian Reservation,
   d. Lower Brule Indian Reservation,
   e. Pine Ridge Indian Reservation,
   f. Rosebud Indian Reservation,
   g. Standing Rock Indian Reservation,
   h. Yankton Indian Reservation.
2. Any land held in trust by the United States for an Indian tribe,
3. Any other land, whether on or off a reservation, that qualifies as Indian country.

Moreover, in the context of these principles, a more detailed discussion for three reservations follows.

Rosebud Sioux Reservation

In the September 16, 1996, FR notice, EPA noted that the U.S. Supreme Court in *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584 (1977), determined that three Congressional acts diminished the Rosebud Sioux Reservation and that it no longer includes Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA proposes to approve the primacy revision for the South Dakota PWSS program for all land in Gregory, Tripp, Lyman and Mellette Counties that was formerly within the 1889 Rosebud Sioux Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land in Gregory, Tripp, Lyman and Mellette Counties that qualifies as Indian country.

Lake Traverse (Sisseton-Wahpeton) Reservation

In the September 16, 1996, FR notice, EPA noted that the U.S. Supreme Court in *DeCoteau* v. *District County Court*, 420 U.S. 425 (1975), determined that an Act of Congress disestablished the Lake Traverse (Sisseton-Wahpeton) Reservation. Therefore, EPA proposes to approve the South Dakota PWSS program for all land that was formerly within the 1867 Lake Traverse Reservation boundaries and does not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land within the former Lake Traverse Reservation that qualifies as Indian country.

Yankton Sioux Reservation

The U.S. Supreme Court's ruling in *South Dakota* v. *Yankton—Sioux Tribe*, 522 U.S. 329 (1998), found that the Yankton Sioux Reservation has been diminished by the unallotted, ''ceded'' lands, that is, those lands that were not allotted to Tribal members and that were sold by the Yankton Sioux Tribe to the United States pursuant to an Agreement executed in 1892 and ratified by the United States Congress in 1894. Accordingly, EPA proposes to approve the South Dakota PWSS program for unallotted, ceded lands that were ceded as a result of the Act of 1894, 28 Stat. 286 and do not otherwise qualify as Indian country under 18 U.S.C. 1151. This proposed approval does not include any trust or other land within the original boundaries of the Yankton Sioux Reservation that qualifies as Indian country under 18 U.S.C. 1151. EPA acknowledges that there may be further interpretation of land status by the final federal court decision in *Yankton Sioux Tribe* v. *Gaffey*, Nos. 98–3893, 3894, 3986, 3900. If Indian country status changes as a result of Gaffey, EPA will act to modify this authorization as appropriate.

Dated: August 4, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 99–21006 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6417–7]

U.S.-Mexico Border Grants; Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency is requesting grant proposals from U.S. nongovernment organizations, municipalities, federally recognized tribes, communities, higher education facilities, and schools for projects within the U.S.-Mexico Border region, that area within 100 km on either side of the inland and maritime U.S.-Mexico border as defined in the La Paz Agreement (1983).

DATES: The original proposal plus one (1) copy must be mailed to the appropriate regional contact (see below) for the state in which the project will occur no later than October 22, 1999. Proposals received after that date will not be considered for funding. EPA expects to announce grant awards in January 2000. Applicants should anticipate project start dates no earlier than March 1, 2000. Grants will be managed separately by EPA staff in Region 6 and Region 9.

ADDRESSES: Grant Applications should be submitted to: Region 6 (TX, NM): Gina Weber, U.S.-Mexico Border Coordinator (6WQ–D); U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733; Telephone: 214–665–8188; Email: weber.gina@epa.gov.

Region 9 (CA, AZ): Wendy Laird-Benner, U.S.-Mexico Border Coordinator (WTR4); U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: 415–744–1168; Email: laird-benner.wendy@epa.gov.

Additional copies of this grant application can also be obtained through the EPA Border Liaison Offices located in El Paso (915–533–7273) or San Diego (619–235–4765). Or call 1–800–334–0741.

FOR FURTHER INFORMATION CONTACT: Region 6 (TX, NM): Gina Weber, U.S.-Mexico Border Coordinator (6WQ–D); Telephone: 214–665–8188; Email: weber.gina@epa.gov

Region 9 (CA, AZ): Wendy Laird-Benner, U.S.-Mexico Border Coordinator (WTR4); Telephone: 415–744–1168; Email: laird-benner.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

This is a regionally managed grants program whose goals and objectives directly relate to and are linked with the Border XXI Program. Successful grant applications will meet objectives of the Border XXI Program as outlined in the U.S.-Mexico Border XXI Program Framework Document and/or the annual Implementation Plans (1996, 1997–1998, 1998). The mission of the Border XXI Program is to protect public health and natural resources, and encourage sustainable development along the U.S.-Mexico border. For purposes of this grants program, sustainable development is defined as ''conservation oriented social and economic development that emphasizes the protection and sustainable use of resources, while addressing both current and future needs, and present and future impacts of human actions as defined in the Border XXI environmental program developed by U.S. and Mexican authorities' (for further information see the Border Environmental Cooperation Commission Project Certification Criteria). This definition is based on the internationally accepted sustainable development definition from the Rio Declaration on Environment and Development: development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

A total of $250,000 will be awarded for ten (10) grants not to exceed $25,000 each. Each Region expects to award five (5) grants. The project period is for one (1) year upon award of the grant. US EPA Region 6 and Region 9 will jointly manage the U.S.-Mexico Border Grants Program.

Entities receiving grants under this program are required to contribute a minimum 5% matching share (in dollars or in-kind goods/services). The U.S.-Mexico Border Grants Program strongly encourages partnering with community members, business, and government agencies to work cooperatively to identify and develop innovative, effective and efficient projects.

Eligibility

Applicants who are eligible to receive these grants include, but are not limited to, the following: U.S. county and city governments, U.S. councils of government, U.S. Indian tribes, U.S. nongovernment organizations, and U.S. schools and universities. Special consideration will be given to U.S. counties, schools, community colleges, and nongovernment organizations who meet the above criteria and submit a complete proposal by the stated deadline.

No awards will be granted for the purchase of equipment for projects or for maintaining existing equipment.

Applicants must identify the environmental statute the project will address. Projects must fall within one of the below environmental statutes:

a. Clean Water Act, Section 104(b)(3): conduct and promote research investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Section 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs and studies relating to solid waste.

d. Clean Air Act, Section 103(b)(3): conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

e. Toxic Substances Control Act, Section 10(a): conduct research, development of monitoring activities on toxic substances.

f. Comprehensive Environmental Response and Sanctuaries Act, Section 311(a): conduct basic research and training related to the detection, assessment, and evaluation of the risks and human effects of exposure to hazardous substances.

Applications

The original and one (1) copy of the project proposal must be sent to the regional contact listed below for the state in which the project will take place. Proposals are limited to one (1) cover page and a five (5) page, double spaced narrative of the proposed project. Proposals must include the following:

(1) *Cover Sheet* (not to exceed one page) that must include:

(a) Project title;

(b) Applicant's name, address, phone number and organization type (i.e. community college, nongovernment organization, tribe);

(c) A list identifying project staff;

(d) A list of entities or organizations that will be providing matching funds to the project and their organization type; and

(e) Environmental statute that the project will address (see Eligibility above).

(2) *Narrative* (not to exceed five pages, double spaced) that must include:

(a) Project goals;

(b) Workplan;

(c) Proposed schedule for the workplan;

(d) Anticipated results, measures of success, and ''where possible—anticipated environmental improvements as a direct result of project implementation;

(e) Budget (i.e., salaries, supplies, travel, consultants, other direct costs, and overhead); and

(f) Plan for evaluating the success of the project.

The proposal must also include letters of commitment from all contributing partners matching funds to the project. These letters must specify the nature of the match (whether it is in-kind services or cash) and the estimated dollar value of the match. These attachments will not be counted in the five (5) page narrative limit. Any other attachments or enclosures will not be considered as part of the proposal.

Final Report

Upon completion of the project, one (1) final report will be required which includes the following information: (a) description of project results, including an evaluation of overall project performance and any environmental improvements directly resulting from project implementation, and (b) financial report. Grants are subject to audit.

Criteria

EPA will use the following evaluation criteria in reviewing proposals (weighting of each criterion is indicated in parentheses):

- The application presents a clear description of a U.S.-Mexico border transboundary issue or concern (20 points);
- The application identifies realistic goals in addressing objectives and priorities as outlined in the U.S.-Mexico Border XXI Program Framework Document and/or annual Implementation Plans (20 points);
- The proposed project focuses on sustainable development, practices and improvements in the following areas: environmental health, risk reduction, hazardous and solid waste reduction, recycling, and water conservation at the local and/or regional level, defined above (20 points);
- The proposal outlines how the applicant will measure improvements in one or more of the above mentioned areas resulting from implementation of the project (15 points);
- The application involves a number and variety of bi-national and U.S.-Mexico border collaborators (i.e., community, nongovernment organizations, Indian tribes, local and regional governments, schools, and universities) (15 points);
- Project funding will be utilized as seed money, supporting innovative projects that would empower communities to take an integral role in protecting their environment (10 points).

No awards will be granted for the purchase of equipment for projects or for maintaining existing equipment.

Dated: August 10, 1999.

Alan D. Hecht,

Principal Deputy Assistant Administrator, Office of International Activities.

[FR Doc. 99–21168 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6422–4]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held September 14–16, 1999, at the Baltimore Hilton, 20 West Baltimore Street, Baltimore, MD 21201. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, September 14, 1999, Work Group meetings only; plenary sessions Wednesday, September 15 and Thursday, September 16, 1999.

ADDRESS: Baltimore Hilton Hotel, 20 West Baltimore Street, Baltimore, MD 21201; 410–539–8400.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Science and Research Work Group, the Economics Work Group and the Regulatory Process Work Group will meet from 10:00 a.m. to 5:00 p.m. on Tuesday, September 14, 1999. The Outreach and Communications Work Group will meet on Thursday, September 16, 1999, from 11:30 a.m. to 3:30 p.m.

The plenary session will begin on Wednesday, September 15 from 9:00 a.m. to 6:00 p.m. and Thursday, September 16, from 9:00 a.m. to 11:30 a.m. The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include discussion of economics questions and recommendations and reports from the other Work Groups. There will be a public comment period on Wednesday, September 15, 1999, from 5:30 p.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260-7778, goode.paula@epa.gov.

Dated: August 10, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–21169 Filed 8–13–99; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Call for Issues Papers on Federal Policy in Support of a National Innovation System

AGENCY: Office of Science and Technology Policy.

ACTION: Notice—Call for Issues Papers.

SUMMARY: The Committee on Technology (CT) of the National Science and Technology Council (NSTC) is seeking to develop and implement an action plan for Federal policy and regulatory reform that will enhance innovation. While numerous reviews and articles have been appeared in recent years about the innovation process and the Federal government's role, this will be the first attempt to develop a specific national reform program for Federal support of innovation and establish priorities for Federal action.

As a first step, the CT is soliciting via this announcement input from industry, academia, non-profits, and state, local and Federal government on opportunities for Federal policy and regulatory reforms that will enhance our national innovation system. The CT is inviting submissions in the form of ''issues papers'' that identify top priorities and outline ideas for reforming Federal support of innovation.

Authority: National Science and Technology Policy, Organization, and Priorities Act of 1976 (Public Law 94–282).

DATES: Deadline for issues paper submissions is September 17, 1999.

ADDRESSES: We urge you to submit your papers electronically (in Microsoft Word or Word Perfect formats) to information@ostp.eop.gov. Please include PRIORITIES FOR FEDERAL INNOVATION REFORM in your subject line. The Title Page of the issues paper should also be clearly marked PRIORITIES FOR FEDERAL INNOVATION REFORM and include the following information: Submitting Organization, Contributing Organizations, Contact Name, Address, telephone, fax number and e-mail address.

Alternately, you may submit hardcopies (3 copies please) to: National Science and Technology Council, Committee on Technology, Old Executive Office Building, Room 423, Washington, DC 20502.

FOR FURTHER INFORMATION CONTACT: Please send your inquiries to the Attention of the NSTC Committee on Technology at information@ostp.eop.gov or fax to 202–456–6023.

SUPPLEMENTARY INFORMATION: The detailed Call for Issues Papers is available on the OSTP website under the ''What's New'' section. (http://www.whitehouse.gov/WH/EOP/OSTP/html/OSTP__Home.html.) The call can be directly accessed at http://www.whitehouse.gov/WH/EOP/OSTP/html/998__5__2.html. You may also obtain a copy of the Call for Issues Papers by faxing a request to the NSTC Council on Technology at 202–456–6023.

Dated: August 10, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–21104 Filed 8–13–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1510]

List of International Routes That Satisfy Criteria for Relief From the International Settlements Policy and Associated Filing Requirements

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This document contains a list of international routes that satisfy criteria for relief from the International Settlements Policy (ISP) and associated filing requirements. This list contains countries that currently meet the standard adopted in the Commission's *International Settlement Rates* proceeding, IB Docket No. 96–261. With this action, the Commission provides carriers with a list to determine which countries are exempt from the ISP requirements.

FOR FURTHER INFORMATION CONTACT: Lisa Choi or Jackie Ruff, Attorney-Advisors, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

The Commission announced today the international routes that qualify for relief from the international settlements policy and associated filing requirements. In *1998 Biennial*

Regulatory Review: Reform of the International Settlements Policy, IB Docket No. 98–148, CC Docket 90–337 (Phase II), IB Docket 95–22, Report and Order and Order on Reconsideration, FCC 99–73 (rel. May 6, 1999) (*ISP Reform Order*), (64 FR 34734, June 29, 1999), the Commission modified its international settlements policy to no longer apply to arrangements for the exchange of international traffic on routes where U.S. carriers are able to terminate at least 50 percent of U.S.-billed traffic at rates that are at least 25 percent below the benchmark settlement rate adopted for that country in *International Settlement Rates*, IB Docket 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997). The countries that currently meet this standard, based on information on file with the Commission, are listed below. This list will be posted on the International Bureau's web page (www.fcc.gov/ib) and will be updated by notice in the **Federal Register** and on the web as new countries are added to the list. A party that seeks to add a foreign market to the list or remove a foreign market from the list may do so by filing a Petition for Declaratory Ruling, along with the appropriate supporting documentation. See 47 CFR 43.51(g)(2) as amended in the *ISP Reform Order*. These countries are Canada, Denmark, France, Germany, Hong Kong, Ireland, Italy, The Netherlands, Norway, Sweden, and United Kingdom.

For additional information, please contact Lisa Choi or Jackie Ruff, Telecommunications Division, International Bureau, (202) 418–1460.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–20693 Filed 8–13–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include Public Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Black Hawk, Bremer, Butler, Cerro Gordo, Chickasaw, Floyd, Woodbury, and Worth Counties for Public Assistance (already designated for Individual Assistance).

Clayton and Crawford Counties for Public Assistance.

Fayette, Howard, and Mitchell Counties for Individual Assistance and Public Assistance.

Buchanan County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–21141 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following area among the areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1999:

Franklin County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–21140 Filed 8–13–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Cynthia Woychic, trustee of the Donna Mae Smith Family Trust, River Falls, Wisconsin; to acquire voting shares of First National Bancorp of River Falls, River Falls, Wisconsin, and thereby indirectly acquire voting shares of First National Bank of River Falls, River Falls, Wisconsin.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21087 Filed 8–13–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with CNB Bancshares, Inc., Evansville, Indiana, and thereby indirectly acquire Civitas Bank, St. Joseph, Michigan.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21084 Filed 8–13–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-19342) published on pages 4112-41123 of the issue for Tuesday, July 29, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for Norway Bancorp, MHC, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Norway Bancorp, MHC, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Norway Savings Bank, Norway, Maine.

In connection with this application, Norway Bancorp, MHC, and Norway Bancorp, Inc., both of Norway, Maine; have also applied to acquire Financial Institutions Service Corp., Lewiston, Maine, and thereby engage in data processing activities, pursuant to §§ 225.28(b)(1), (10), and (14) of Regulation Y.

Comments on this application must be received by August 23, 1999.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21086 Filed 8–13–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Bradford Pointe of Evansville, L.P., Evansville, Indiana, and thereby indirectly acquire Bradford Pointe of Evansville, II, L.P., Evansville, Indiana; House Investments Prestwick Columbus II, L.P., Indianapolis, Indiana; Housing Partners, Inc., The Armory L.P., Columbus, Indiana; Housing Credit Partners I, Ltd., Evans/Bajandas Project, Evansville, Indiana; Pedcor Investments 1987-I, L.P., Indianapolis, Indiana; Shelbyville High Apartments, L.P., Evansville, Indiana, and thereby engage in permissible community development activities, pursuant to § 225.28(b)(12) of Regulation Y; IndFed Mortgage Company, Valapariso, Indiana, and thereby engage in permissible community development activities and related financial and investment advisory activities, pursuant to § 225.28(b)(12) of Regulation Y; Pinnacle Financial Consultants, Inc., Valapariso, Indiana, and thereby engage in permissible financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, and in permissible agency transactional services for customer accounts, pursuant to § 225.28(b)(7) of Regulation Y; and Citizens Life Assurance Company, Phoenix, Arizona, and thereby engage in permissible credit reinsurance activities, pursuant to § 225.28(b)(11)(i) of Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. National Bancshares Corporation of Texas, San Antonio, Texas; to engage *de novo* through its subsidiary, NBC Financial, Inc., San Antonio, Texas, in securities brokerage activities and other transactional services, pursuant to § 225.28(b)(7) of Regulation Y; and in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–21085 Filed 8–13–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Community/Tribal Subcommittee (C/TS) of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Roundtable Discussion

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following roundtable discussion.

Name: Community/Tribal Subcommittee Health Assessment Roundtable Discussion.

Times and Dates: 1 p.m.–5:30 p.m., August 30, 1999. 9 a.m.–3 p.m., August 31, 1999.

Place: Marriott Fisherman's Wharf, 1250 Columbus Avenue, San Francisco, California 94133.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 80 people (public comment periods may be limited due to agenda time constraints and the number of non subcommittee attendees).

Purpose: A Roundtable Discussion will provide the Community and Tribal Subcommittee members and special consultants with an overview of the mechanism the Agency uses to conduct health assessments and how follow-up recommendations are determined. This subcommittee discussion will result in recommendations that are presented to the Board of Scientific Counselors for discussion to recommend to ATSDR a course of action for health assessments. The Board will make recommendations on the quality of science in ATSDR-supported research, identify emerging problems which require scientific investigation, discuss the accuracy and currency of the science in ATSDR reports, and suggest program areas to emphasize and/or to de-emphasize. In addition, the Board shall make recommendations regarding research programs and conferences that ATSDR may support through grants to make grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: The agenda will include a discussion of ATSDR's Health Assessment Process with the Community and Tribal Subcommittee and Special Consultants.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sandra Coulberson, Designated Federal Official, C/TS, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–6002, or toll-free at 1–888–422–8737. Media interested in interviewing staff should contact Mike Groutt, Public Affairs Specialist, at (404) 639–0501, or toll-free at 1–888–422–8737.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21109 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee (C/TS) of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Community/Tribal Subcommittee

Times and Dates: 9:00 a.m.–5 p.m., September 1, 1999. 9:00 a.m.–12 p.m., September 2, 1999

Place: Marriott Fisherman's Wharf, 1250 Columbus Avenue, San Francisco, California 94133.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 80 people (public comment periods may be limited due to agenda time constraints and the number of non subcommittee attendees).

Purpose: The Community/Tribal Subcommittee will convene its quarterly meeting. This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters to be Discussed: Issues and concerns of the Community/Tribal Subcommittee as it relates to ATSDR's community and tribal programs. The meeting's primary agenda item will be a discussion of how the agency conducts activities at federal facility sites. The agency will present the process for conducting health assessments at federal facilities: protocol and procedures for working with the Department of Energy and the Department of Defense. A discussion will be held to obtain community and tribal input. Recommendations will then be developed and forwarded to the ATSDR, BSC for action. Written comments are welcome and should be received by the contact person prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sandra Coulberson, Designated Federal Official, C/TS, ATSDR, M/S E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–6002, or toll-free at 1–888–422–8737. Media interested in interviewing staff should contact Mike Groutt, Public Affairs Specialist, at (404) 639–0501, or toll-free at 1–888–422–8737.

The Director, Management and Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–21111 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., September 22, 1999. 8:30 a.m.–5 p.m., September 23, 1999.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020. Telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include presentations from the National Center for Environmental Health (NCEH) and the National Institute for Occupational Safety and Health (NIOSH) regarding the progress of current studies. There will also be a preliminary Public Health Assessment report for the Fernald area from the Agency for Toxic Substances and Chemical Registry (ATSDR).

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Dr. David Pedersen, Health-Related Energy Research Branch, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH, CDC, Robert A. Taft Laboratory, 4676 Columbia Parkway, M/S R–44, Cincinnati, Ohio 45226. Telephone 513/841–4400, Fax 513/841–4470.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 10, 1999.

Carolyn J. Russell

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–21108 Filed 8–13–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to HHS for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary.

The Leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation); and the fair market value of these resources/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

Respondents: State and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 10, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–21092 Filed 8–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2695]

Agency Emergency Processing Under OMB Review; Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

AGENCY: –Food and Drug Administration, HHS.

ACTION:– Notice.

SUMMARY:– The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information, originally approved under OMB control number 0900–0003, concerns a survey of manufacturers of biomedical equipment about the Year 2000 (Y2K) compliance of their products.

DATES: Submit written comments on the collection of information by August 19, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Office of Science and Technology (HFZ–140), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 132, or FAX 301–443–9101.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. This collection is needed immediately because some manufacturers have not yet provided data on their noncompliant products and because other manufacturers have provided either incomplete or preliminary, not final, information. Health care facilities and others are depending upon the information in the FDA-operated Federal Y2K Biomedical Equipment Clearinghouse (the Clearinghouse) as they assess the Y2K compliance of the biomedical equipment used in their facilities. In order to continue this collection activity, it is necessary to extend this activity until February 29, 2000. FDA is requesting OMB approval by August 19, 1999.

– FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

The Deputy Secretary of the Department of Health and Human Services, on behalf of the governmentwide Biomedical Equipment Subgroup of the Chief Information Officer Council’s Y2K Subcommittee, is surveying manufacturers of biomedical equipment about the Y2K compliance of their products. The existence of a Y2K date problem in biomedical equipment could pose potentially serious health and safety consequences.

Manufacturers have been asked to post information about noncompliant products on a website and link this to a government website on biomedical equipment. If all of a manufacturer’s products are compliant, they may provide a notice of total product compliance. Manufacturers have the option to mail the information to the Department of Health and Human Services (DHHS) for posting on the government website, or they may provide it electronically. All information collected is available to the public through the government website.

FDA, on behalf of DHHS, is continuing to solicit product status information from manufacturers that have not responded to this request and to seek clarification or expansion of specific information that has been received, but is incomplete.

– To be Y2K compliant, a product must be able to accurately process date information in the Y2K and between the 20th and 21st centuries, including leap year calculations. Medical devices and scientific laboratory equipment may experience problems beginning January 1, 2000, if the computer systems, software applications, or embedded chips used in these devices and equipment contain two-digit fields for year representation.

FDA regulates medical devices and needs information regarding the Y2K compliance of these products. Under a previous good manufacturing practices regulation and the current quality system regulation, effective June 1, 1997, manufacturers must investigate and correct problems with medical devices that present a significant risk to public health. This includes devices that fail to operate according to their specifications because of inaccurate date recording and/or calculations. Also, section 518 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h) requires notification of users or purchasers when a device presents an unreasonable risk of substantial harm to public health. These regulations, however, do not apply to all biomedical equipment, such as scientific laboratory equipment, but only to medical devices. Therefore, a proactive collection of Y2K compliance information of all biomedical equipment is necessary to prevent a Y2K date problem from causing any public health risk in the patient care services and health research initiatives of the next century.

–FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
450	1	450	8	3,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on mailing lists and data bases on product approvals, FDA believes that approximately 150 manufacturers have not yet provided data to the Clearinghouse on Y2K compliance status of their products. Based on analysis of data already in the Clearinghouse, approximately 300 manufacturers have provided information that is either incomplete or that requires clarification. FDA estimates that it will take manufacturers an average of 8 hours to collect, prepare, and submit the requested information.

William K. Hubbard.

Dated: August 10, 1999

Senior Associate Commissioner for Policy, Planning, and Coordination.

[FR Doc. 99–21082 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2673]

Caudill Seed Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Caudill Seed Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of irradiation to control microbial pathogens in alfalfa and other sprouting seeds.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9M4673) has been filed by Caudill Seed Co., Inc., 1402 West Main St., Louisville, KY 40203. The petition proposes to amend the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) to provide for the safe use of sources of ionizing radiation to control microbial pathogens in alfalfa and other sprouting seeds.

–The agency has determined under 21 CFR 25.32(j) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 1, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–21081 Filed 8–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: August 31–September 1, 1999.

Open: August 31, 1999, 8:30 AM to 1:00 PM.

Agenda: The agenda includes introduction of new Council members, remarks by the Acting Director, NCCAM, and other business of the Council.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Closed: August 31, 1999, 1:00 PM to 6:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Open: September 1, 1999, 8:30 AM to 1:00 PM.

Agenda: Continuation of Council business.

Place: Doubletree Hotel, Plaza III Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard Nahin, Phd, Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Room 5B36, Bethesda, MD 20892, 301–594–2013.

Dated: August 6, 1999.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 99–21105 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 12–13, 1999.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 25, 1999.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 9, 1999.

Anna Snouffer,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–21107 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 17, 1999.

Time: 10:00 AM to 12:01 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, 301–435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 19, 1999.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21106 Filed 8–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kern National Wildlife Refuge, California

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for the Kern National Wildlife Refuge Complex, Kern and Tulare Counties, California.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Kern National Wildlife Refuge (Refuge) Complex. The Service is gathering information necessary to prepare a CCP and EA pursuant to the National Wildlife Refuge System Improvement Act and the National Environmental Policy Act (NEPA). The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to accomplish the following:

(1) Advise other agencies and the public of our intentions;

(2) Obtain suggestions and information on the scope of issues to include in the planning documents; and

(3) announce public scoping workshops on August 30 and 31, 1999.

DATES: Public scoping workshops will be held at the following locations beginning at 7:00 pm and ending no later than 9:00 pm on the dates indicated:

Date	Location
August 30, 1999	Tulare Community Center Tulare, California.
August 31,1999	Beale Library (Auditorium) Bakersfield, California.

Interested persons are encouraged to attend the workshops to identify issues, concerns, and opportunities to be addressed in the CCP. To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before September 30, 1999.

ADDRESSES: Send written comments on the EA or CCP or requests to be added to the mailing list to the following address: Planning Team Leader—Kern NWR Complex, California/Nevada Refuge Planning Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–1916, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Mark Pelz, Planning Team Leader, by phone at (916) 414–6504, or email at mark____pelz@fws.gov, or David Hardt, Project Leader, by phone at (661) 725–2767, or email at dave____hardt@fws.gov.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended, mandates that all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP will guide management decisions by identifying Refuge goals, long-range objectives and management strategies for achieving the Refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, wildlife-dependant recreation and other public uses, cultural resources, and environmental effects. Public input into this planning process is important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will manage the Refuge Complex.

The Service is soliciting information from the public via written comments and public meetings. Interested parties are urged to submit their names and addresses to be added to the Service's mailing list. The Service will periodically send out special planning updates to those who are interested in the Refuge Complex. Among other things, these mailings will provide information on how to participate in the CCP planning process. Comments received will be used to identify key issues and to develop goals, objectives, and management strategies. Additional opportunities for public participation will occur throughout the process, which is expected to be completed in mid 2001.

The Kern Refuge Complex is composed of three refuges: Kern, Pixley, and Blue Ridge. Kern Refuge is located 19 miles west of Delano, California at the southern end of the San Joaquin Valley. It was established in 1960 to provide wintering habitat for waterfowl in the southern San Joaquin Valley. The Kern Refuge consists of a single, 10,618-acre unit owned by the Federal government. The Refuge purpose is to provide ''* * * an inviolate sanctuary, or for any other management purpose, for migratory birds.'' 16 U.S.C. 715d (Migratory Bird Conservation Act).

Pixley Refuge is located approximately 19 miles south of the City of Tulare, northeast of Kern Refuge. This Refuge was set aside in 1959 to provide wintering habitat for waterfowl as well as the endangered blunt-nosed leopard lizard. Pixley Refuge is composed of a 8,800 acres, of which about 70 percent are owned by the Federal government. The Refuge purposes are: (1) ''* * * a land-conservation and land-utilization program * * *'' 7 U.S.C. 1011 (Bankhead-Jones Farm Tenant Act); (2) ''* * * as refuges for migratory birds and other wildlife: * * *'' Secretarial Order 2843, dated Nov. 17, 1959; and (3)''* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *'' 16 U.S.C. 1534 (Endangered Species Act of 1973).

Blue Ridge Refuge is located in central Tulare County, northeast of Porterville, in the foothills of the Sierra Nevada. This Refuge was established in 1982 to protect critical roosting habitat for the California condor. The 897 acres in the Blue Ridge Refuge are all owned by the Federal government. The refuge purpose is ''* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *'' 16 U.S.C. 1534 (Endangered Species Act of 1973).

The outcome of this planning process will be a CCP to guide Refuge management for the next 15 years and accompanying NEPA document. It is estimated that a draft CCP and NEPA document will be made available for public review in the latter part of 2000.

Dated: August 9, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations.

[FR Doc. 99–20946 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Wednesday, September 29, 1999, at the Garfield County Courthouse in Glenwood Springs, Colorado.

DATES: Wednesday, September 29, 1999.

ADDRESSES: For further information, contact Lynn Barclay, Bureau of Land Management (BLM), 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5096.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on September, 29, 1999, at the Garfield County Courthouse, County Commissioners Meeting Room, 109 8th Street, Glenwood Springs, Colorado. The meeting will start at 9 a.m. and include discussions of the proposed statewide recreation guidelines, grazing permit renewals, and wilderness review.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Grand Junction and Craig, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 10, 1999.

Mark T. Morse,

Center Manager, Northwest Center.

[FR Doc. 99–21176 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Off-Road Vehicle Management Plan/Supplement to the Final Environmental Impact Statement

AGENCY: National Park Service, Big Cypress National Preserve, Florida.

SUMMARY: This Off-Road Vehicle Management Plan/Supplement to the Final Environmental Impact Statement (ORVMP/SFEIS) identifies and assesses potential impacts of alternative options for the management of off-road vehicles within the Big Cypress National Preserve. The ORVMP/SFEIS describes management concerns which include the need to protect natural resources while providing recreational ORV access to the Preserve.

DATES: The ORVMP/SFEIS will be available for review August 13, 1999, until November 12, 1999. Written comments must be received by the Superintendent at the address below or postmarked no later than November 12, 1999. Public meetings will be held in the Preserve area at times to be published in local newspapers.

ADDRESSES: The ORVMP/SFEIS may be viewed on the Internet at www.nps.gov/BICY/ORVPLAN. Copies of the ORVMP/SFEIS are available from the Superintendent at the following address. Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida 34141, Telephone: (941) 695–2000.

Copies of the ORVMP/SFEIS may also be read at the following libraries:

Barron Public Library, P.O. Box 785, La Belle, FL 33935, Telephone: (941) 675–0833
Glades County Public Library, P.O. Box 505, Moore Haven, FL 33471, Telephone: (941) 946–0744
Monroe County Public Library, 700 Fleming Street, Key West, FL 33040, Telephone: (305) 292–3595
Collier County Public Library, 850 Central Avenue, Naples, FL 34102, Telephone: (941) 261–8208
Miami-Dade Public Library, 101 W. Flagler Street, Miami, FL 33130, Telephone: (305) 375–2665
Broward County Public Library, 100 South Andrews Avenue, Ft. Lauderdale, FL 33301, Telephone: (954) 357–7444
Palm Beach County Public Library, 3650 Summit Boulevard, West Palm Beach, FL 33406, Telephone: (561) 233–2600
Lee County Public Library, 2050 Lee Street, Fort Myers, FL 33901, Telephone: (941) 479–4620

FOR FURTHER INFORMATION CONTACT: For additional information, please contact the Superintendent.

Dated: August 6, 1999.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 99–21072 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Final Environmental Impact Statement General Management Plan; Lyndon B. Johnson National Historical Park, Texas

Introduction

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190 (as amended), and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2 the Department of the Interior, National Park Service, has prepared the following Record of Decision on the Final Environmental Impact Statement (EIS) for the General Management Plan for Lyndon B. Johnson National Historical Park.

This Record of Decision is a concise statement of what decisions were made, what alternatives were considered, the environmentally preferred alternative, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Decision (Selected Action)

The National Park Service will implement Alternative 3, the proposed action, as described in the Draft and Final Environmental Impact Statements.

Concept

This alternative significantly expands the park operations, maintenance, and interpretation levels in Johnson City and at the ranch. It greatly increases park outreach to the region and allows the public much greater access to the Texas White House.

This alternative depends heavily on construction of a new combination bus maintenance facility/interpretive ranger office south of the Pedernales River. This new facility would allow the ranch maintenance and ranch operations to move into the existing bus maintenance facility and a visitor contact station to be installed in Klein's shop. Without this new facility, none of the other operations could be moved and this alternative could not be implemented. All facets of visitor interpretation and transportation would be affected.

Interpretation and Visitor Use

Interpretive programs and facilities throughout the park would present all primary and many secondary interpretive themes to enhance the visitor experience. Visitors would find opportunities to participate in a range of orientation, education, and interpretive activities for differing levels of interest, understanding, and sophistication. They would be able to explore the park's diverse resources, visualize the setting associated with the historic time period interpreted, and identify with the experience and feelings of personalities who historically lived at or visited this site. They would have access to accurate, balanced, and in-depth information about Johnson's life and legacy.

The interpretation would be designed to significantly increase the number of repeat visitors who return to the park for additional programs and special events. The return of the wagon transport in Johnson City and the opening of the Texas White House is expected to create considerable interest initially in visiting the park and the variety and number of new programs and events would continue to bring visitors back. The improved park experience and greater outreach programs would enhance the park's position within the crowded tourism market of south-central Texas and would be expected to substantially increase visitation at both the Johnson City and LBJ Ranch districts.

Johnson City District

All facilities in this district would be open on a daily basis. Additional interpretive staff (up to 14 FTEs) would provide creative, well-researched, high quality interpretive programs. The visitor center would function as it does now, but with extended emphasis on children's interpretation, lectures, and additional interpretive presentations on a variety of topics.

Ranger-led tours of the LBJ boyhood home would continue to be provided daily on a regularly scheduled basis. Education program opportunities would be expanded to educational institutions and schools throughout the region.

Significant improvements in interpretive opportunities would be implemented at the Johnson settlement. Interpretation would be expanded to provide costumed interpreters at the cabin and chuckwagon on a daily basis. A wagon would be used to provide transportation for visitors from a staging area (the Smith house site) outside the historic area to the exhibit center, and to set the mood for the costumed interpretive program.

LBJ Ranch District

Cooperative arrangements with the Lyndon B. Johnson State Historical Park and the Southwest Parks and Monuments Association would remain positive and strong with increased dependence on each organization to share in the responsibility of effectively presenting both parks' stories in all interpretive programs and materials when feasible. The cooperative arrangement between the state and national historical parks would be expanded to include cooperation/assistance with exhibits and interpretation and better overall integration of programs. Both parks would work together to encourage package bus tours from around the region and country.

Interpretation at the show barn would be expanded to include personal services, exhibits, and audiovisual productions. There would be an upgrade of exhibits in the barn as well as a display of historic farming and ranching equipment. There would also be an increase in special events and education programs.

In phase 2, the Texas White House complex would become the focal point of the interpretive program at the LBJ Ranch. Visitors would also have access to several other historic features of the Texas White House complex. The Secret Service command post would be restored and interpreted. The airplane hangar would become a flexible exhibit area with multipurpose space for interpretive programs, audiovisual presentations, lectures, and films. The Martin barn would contain exhibits relating to early agricultural history on the LBJ Ranch. Klein's shop would be used as a visitor contact station with a limited SPMA sales area and restrooms.

Facility Development and Maintenance

Johnson City District

Although the park would not look substantially different than it does today, some changes would be noticeable. The level of maintenance on buildings and landscape would be higher than at present. A cultural landscape report would determine the feasibility and desirability of restoring the landscape of the Johnson cabin and the boyhood home to a more historical appearance. If restoration is not considered feasible or desirable, the landscapes would continue to be maintained at the present level. The nonhistoric Smith house would be removed and the site landscaped to function as a staging area for the horse-drawn wagons. The nonhistoric Hobbs house would be disposed of either by exchanging the property for the historic Alexander house (which the park rents and maintains) or by selling the house and requiring that it be moved off the property. The site would then be landscaped open space.

A new maintenance facility for the Johnson City district would be constructed south of the settlement in the back 40. The red maintenance building, a historic structure that is not a part of the park's interpretive story, would be adaptively reused or leased under the historic leasing program or used for other park purposes. The park would attempt to acquire the Masonic Lodge, the Cox tract, and the Alexander house. If acquired, the Alexander House would be adaptively reused. Scenic easements would be sought for the area along Town Creek between the education center (Taylor house) and the Volunteers in Parks campsites to the south. Town Creek provides an excellent backdrop for the settlement, and vegetation along its banks would protect its viewshed from any future development to the south and east. The park would work with park neighbors to ensure that any development does not detract from the historic character of the park.

As a part of its ongoing research, the park would develop a cultural landscape report for the entire district to improve interpretation of historic resources and to ensure accuracy of historic landscapes.

Visitors with disabilities would continue to be able to drive on existing maintained roads to the settlement exhibit center or ride accessible buses.

LBJ Ranch District

Expanded cooperation with the state historical park could extend to construction of a new joint bus maintenance facility on state historical park property. Should that prove infeasible, the park would seek to purchase the Weinheimer property across the road west of the state historical park's maintenance facility.

The Junction School would be restored on the exterior and rehabilitated on the interior for educational programs. Restrooms and utilities would be installed. A trail would be constructed from the Junction School to the Texas White House complex so that visitors could walk rather than ride the bus should they so desire.

The show barn would be rehabilitated with new exhibits of ranching and historic farm equipment, as well as new restroom facilities and upgraded utilities. The ranching operation office would move to the vacated bus maintenance facility with the show barn becoming an interpretive/visitor use area.

Utilities at the Volunteers in Parks site would be upgraded immediately. However, because the trailer pads are tightly arranged and unsatisfactory, the entire Volunteers in Parks site facility would eventually be moved to a site east of the communications tower/hay barn/boneyard and screened by vegetation and topography. Four new concrete RV pads would be constructed as well as a gravel access road.

Ranch lands would be maintained in accordance with current NPS policies and procedures to look essentially as they did during the president's lifetime. A cultural landscape report would determine whether missing historic features of the landscape would be restored.

Scenic easements would be purchased, wherever possible, over those properties within the authorized ranch boundary but not within NPS ownership, as a means of ensuring that the visual impact of any such development within those easements would be minimal.

Development concept plans and design guidelines for the LBJ Ranch district would be required.

In phase 2, the Texas White House would be stabilized and opened to the public. The maintenance operation would be moved out of Klein's shop and the structure converted to a visitor contact station/SPMA sales operation serving the LBJ Ranch. Once the new bus maintenance facility is constructed south of the Pedernales River, the vacated bus barn would be converted for ranch maintenance operations moved from Klein's shop and the ranching operation moved from the show barn.

In phase 2, the Martin barn would be preserved with walk-through exhibits. The communications trailers would be stabilized, the exteriors restored, and the communications equipment preserved. The Secret Service command post would be restored for interpretive purposes. The LBJ hangar would be preserved and use for exhibits, lectures, and films. The poolhouse would be preserved as an important feature of the Texas White House landscape, but the interior would be adaptively reused.

Other Alternatives Considered

Two other alternatives to the selected plan were evaluated in the draft and final environmental impact statements.

Alternative 1 (no action) would continue the existing conditions at the park. It would not provide the level of access to the Texas White House that is expected by the public. It would ''mothball'' several historic structures and leave park maintenance within a historic structure in the ranch house complex. Bus maintenance and ranch interpretation would continue as at present in inadequate facilities. In Johnson City, the maintenance facility would remain in a historic structure inappropriate for such use and no attempt to protect the national historical park's setting would be made despite the influx of growth.

Alternative 2, a ''minimum requirements alternative,'' is characterized by small, incremental changes in everyday maintenance, interpretation, and administration. It raise the level of maintenance and preservation, provides additional personal services for interpretation, modestly expands educational outreach to the local community, and provides the additional staff necessary to prepare the Texas White House for opening to the public on a limited schedule. At the Ranch District, the maintenance facility would be moved to a new structure in the vicinity of the communications tower. Several historic structures would be stabilized or adaptive reused that are currently preserved in a less than usable state. In Johnson City, the park would seek to acquire the Alexander House and two properties along U.S. Route 290 to protect an important Johnson family related structure and the south viewshed from the park.

Environmentally Preferred Alternative

A Record of Decision must identify the environmentally preferable alternative, an alternative that causes the least damage to the biological environment, and that best protects, preserves, and enhances historic, cultural, and natural resources. Alternative 3, the selected action, is the environmentally preferred alternative. It provides the greatest level of preservation of historic structures of all alternatives, provides the largest economic benefits to Blanco and Gillespie counties, and provides the most comprehensive interpretive experience for the visitor. Similar impacts on soils and water resources and quality occur among the three alternatives. Alternative 3 has the most impact upon floodplains. It proposes construction in Johnson City that may occur within a floodplain. The proposed new bus maintenance facility on the state historical park property may be within the 500 year floodplain. Further evaluation would determine whether mitigating measures are required but only minor impact on the floodplains of Town Creek and the Pedernales River is expected because both sites already have development and the area of new impact would be small.

Basis for Decision

The selected action includes a combination of actions that the National Park Services believes will provide the best interpretative experience for visitors, provide the highest level of preservation for historic structures, and provide a high level of educational outreach to the community. In particular, the Texas White House would be open to the public to the greatest extent possible and with the highest level of interpretation. The selected action has only a minor impact upon the national historical park's natural resources.

Measures To Minimize Harm

The Texas State Historic Preservation Office was consulted throughout the development of alternative and ''strongly supports the implementation of Alternative #3, which is the National Park Service's proposed course of action.'' Further consultation will occur prior to implementation of individual actions described within the plan.

A floodplain delineation along Town Creek will be necessary within Johnson City prior to construction to determine whether mitigation measures need to be implemented prior to construction of maintenance facilities. Any bus maintenance facilities constructed for the Ranch District would be designed to be out of the 500 year floodway.

Conclusion

The above factors and considerations justify selection of the alternative identified as the proposed action in the final environmental impact statement.

Dated: August 15, 1999.

John T. Tiff,

Acting Superintendent, Lyndon B. Johnson National Historic Park.

[FR Doc. 99–21070 Filed 8–13–99; 8:45 am]

BILLING CODE 4710–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an emergency meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission concerning the recent critical incidents in the park. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, August 12, 1999 at 4:00 p.m.

Address: New Jersey District Office, Route 615, Layton, NJ.

The agenda will include a report on the drownings from Superintendent Bill Laitner and comments from members of the Citizen Advisory Commission. The meeting will be open to the public and there will be an opportunity for public comment on this issue.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: August 5, 1999.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg
U.S. Senate
SH–506 Hart Senate Office Building
Washington, D.C. 20510–3002

Honorable Robert G. Torricelli
U.S. Senate
Washington, D.C. 20510–3001

Honorable Richard Santorum
U.S. Senate
SR 120 Senate Russell Office Bldg.
Washington, D.C. 20510

Honorable Arlen Specter
U.S. Senate
SH–530 Hart Senate Office Bldg.
Washington, D.C. 20510–3802

Honorable Pat Toomey
U.S. House of Representatives
Cannon House Office Bldg.
Washington D.C. 20515

Honorable Don Sherwood
U.S. House of Representatives
2370 Rayburn House Office Bldg.
Washington, D.C. 20515–3810

Honorable Margaret Roukema
U.S. House of Representatives
2244 Rayburn House Office Bldg.
Washington, D.C. 20515–3005

Honorable Tom Ridge
State Capitol
Harrisburg, PA 17120

Honorable Christine Whitman
State House
Trenton, NJ 08625

[FR Doc. 99–21071 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Woodlake, CA in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Woodlake, CA in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation and the Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1932, human remains representing one individual were recovered from the Robla Lomas Ranch, Woodlake, CA under unknown circumstances by person(s) unknown. In 1972, these human remains were donated to the Los

Angeles County Museum of Natural History by Helen Phillips Spears. No known individual was identified. No associated funerary objects are present.

Collections documentation indicates this individual was found with ten other individuals on the Robla Lomas Ranch. Documentation also suggests that these human remains are probably those of an individual killed by the Spanish during a battle known to have occured at the Robla Lomas Ranch in 1832. Ethnohistoric information indicates that the Robla Lomas Ranch is within the historic territory traditionally occupied by the Southern Valley Yokuts, now represented by the present-day Tule River Indian Tribe of the Tule River Reservation. Consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation confirm that these human remains are affiliated with the Tule River Indian Tribe of the Tule River Reservation.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tule River Indian Tribe of the Tule River Reservation.

This notice has been sent to officials of the Tule River Indian Tribe of the Tule River Reservation and the Santa Rosa Indian Community of the Santa Rosa Rancheria. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 15, 1999. Repatriation of the human remains to the Tule River Indian Tribe of the Tule River Reservation may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–21068 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Navajo County, AZ in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Navajo County, AZ in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Hopi Tribe.

Between 1935 and 1965, human remains representing one individual were removed from the Homolobi (Homolovi ι4) site in Navajo County, AZ under unknown circumstances by person(s) unknown. In 1969, these human remains were donated by Gordon Pond to the Los Angeles County Museum of Natural History. No known individuals were identified. No associated funerary objects are present.

Based on ethnohistoric information and Hopi oral tradition, the Homolobi site has been identified as ancestral to the Hopi Tribe. Consultation with representatives of the Hopi Tribe indicate the Homolobi site was inhabited exclusively by ancestors of the Hopi Tribe.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 15, 1999. Repatriation of the human remains to the Hopi Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–21069 Filed 8–13–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Cargon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 23672, May 3, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews. [1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 4, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution, [2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before October 7, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 7, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 11, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21171 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–U

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Mill Iron Works, Trinity Fitting and Flange Group, Tube Forgings of America, and Weldbend to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice of discontinuation of countervailing duty and antidumping investigations.

SUMMARY: On August 9, 1999, the Department of Commerce issued a determination to not initiate antidumping and countervailing duty investigations on crude oil from Iraq, Mexico, Saudi Arabia, and Venezuela. Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations concerning those products (Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)) are discontinued.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Issued: August 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21173 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 23677, May 3, 1999) of the subject five-year reviews were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on September 20, 1999, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 23, 1999, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 23, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: August 11, 1999

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21172 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission found the response submitted by E.I. DuPont de Nemours & Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–386 and 731–TA–812 (Final)]

Live Cattle From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–812 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada of live cattle.[1]

Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of live cattle from Canada, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–386 (Final) under section 705(b) of the Act (19 U.S.C. 1671d(b)). The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

[1] For purposes of these investigations, Commerce has defined the subject merchandise as all live cattle except: (1) Imports of dairy cows for the production of milk for human consumption; and (2) purebred or other cattle specially imported for breeding purposes. The merchandise subject to these investigations is provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTS), with the exception of statistical reporting numbers 0102.90.40.72 and 0102.90.40.74.

Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of live cattle from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a letter filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation (''R-Calf'') (Columbus, MT), and its supporting trade associations and individual cattlemen and cattlewomen. Counsel for R-Calf withdrew its petitions and addenda in countervailing duty investigation No. 701–A–385 (Preliminary) and antidumping investigations 731–TA–809–810 (Preliminary) on November 10, 1998. The letter received on November 12, 1998, petitioning for institution of antidumping and countervailing duty investigations, requested that the petition and addenda filed in the discontinued investigations be incorporated by reference in the instant investigations.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of the investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 23, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 6, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 1, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 4, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing *testimony in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 30, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 14, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 14, 1999. On November 2, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 4, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–21174 Filed 8–13–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 10, 1999.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44

U.S.C. Chapter 35). OMB approval has been requested by August 25, 1999. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills at 202–219–5095.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics.

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079 (revision).

Frequency: Monthly, Quarterly, and Annually.

Affected Public: State Governments.

Number of Respondents: 55.

Estimated Time per Respondent: 14 hours (average).

Total Burden Hours: 781 hours (average).

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operating/maintaining): $0.

Description: The Bureau of Labor Statistics (BLS) enters into Cooperative Agreements annually with State Employment Security Agencies (SESAs) in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa to provide them financial assistance for the production and operation of one or more of the following LMI statistical programs, which themselves have been approved by OMB separately: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Employment and Wages Report, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

The collection of information allows Federal staff to negotiate the Cooperative Agreement with the SESAs and monitor their financial and programmatic performance, and to adhere to administrative requirements imposed by regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and for meeting Federal reporting requirements.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–21156 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,595]

AMP Incorporated, Harrisburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1999 in response to a worker petition which was filed on behalf of workers and former workers at AMP Incorporated, located in Harrisburg, Pennsylvania (TA–W–35,598).

The Department of Labor has determined that the petition is invalid. Under the Trade Act of 1974, a petition may be filed by a group of three or more workers in an appropriate subdivision of a firm, by a company official, or by their union or other duly authorized representative. the petitioners do not share a common work location and the petitioners are not authorized to file on behalf of all workers of the company. Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21148 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 873]

Eaton Corporation, Cutler-Hammer Industrial Controls Division, Bowling Green, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 9, 1998, applicable to workers of Eaton Corporation, Cutler-Hammer Industrial Controls Division located in Bowling Green, Kentucky. The notice was published in the **Federal Register** on October 23, 1998 (63 FR 56943).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of electrical industrial controls. New information shows that worker separations occurred at Eaton Corporation's Bowling Green, Kentucky facility after the September 30, 1998 termination date. The short lapse of coverage from March 21, 1998 through September 30, 1998 excluded the remaining workers. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–34, 873 is hereby issued as follows:

All workers of Eaton Corporation, Bowling Green, Kentucky who became totally or partially separated from employment on or after March 21, 1998 through October 9, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21153 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,230 and TA–W–36,230A]

Johansen Brothers Shoe Company, Inc., Harrisburg, Arkansas and Corning, Arkansas; Notice of Termination of Certification

This notice terminates the Determination Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on July 14, 1999, applicable to all workers of Johansen Brothers Shoe Company, Inc. located in Harrisburg and Corning, Arkansas. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the worker certification. The workers were engaged in employment related to the production of women's casual and dress shoes. Findings on review show that on July 2, 1999, the Department issued a certification of eligibility applicable to all workers of Johansen Brothers Shoe Company, Inc., Corning, Arkansas (TA–W–36,109), and Harrisburg, Arkansas (TA–W–36,109A). Workers separated from employment with the subject firm on or after April 7, 1998 through July 2, 2001, are eligible to apply for worker adjustment assistance.

Based on this new information, the Department is terminating the certification for petition number TA–W–36,230 and TA–W–36,230A. Further coverage for workers under this certification would serve no purpose, and the certification has been terminated.

Signed in Washington, DC, this 2nd day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21146 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,704]

Johnson & Johnson Medical, Inc., Including Workers of Ethicon, Inc., Kelly Services, Inc., and Altemps, Arlington, Texas; Amended Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 1999, applicable to workers of Johnson & Johnson Medical, Inc, located in Arlington, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce surgical latex gloves. Company information shows that Ethicon, Inc. is the parent firm of Johnson & Johnson Medical located in Arlington, Texas. The company also reports that some workers separated from employment at Johnson & Johnson Medical, Inc., Arlington, Texas had their wages reported under three separate unemployment insurance (UI) tax accounts, at Ethicon, Inc., Kelly Services, Inc., and Altemps, Arlington, Texas. Workers from these companies produced surgical latex gloves at the Arlington, Texas facility of Johnson & Johnson Medical, Inc.

Based on these findings, the Department is amending the certification in include workers from Ethicon, Inc., Kelly Services, Inc., and Altemps who were engaged in the production of surgical latex gloves at Johnson & Johnson Medical, Inc., Arlington, Texas.

The intent of the Department's certification is to include all workers of Johnson & Johnson Medical, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,704 is hereby issued as follows:

All workers of Johnson & Johnson Medical, Inc., Arlington, Texas and workers of Ethicon, Inc., Kelly Services, Inc. and Altemps, Arlington, Texas engaged in employment related to the production of surgical latex gloves for Johnson & Johnson Medical, Inc., Arlington, Texas who became totally or partially separated from employment on or after April 19, 1999 through March 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21154 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,156]

Leica Microsystems Incorporated, Depew, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999 in response to a petition filed on March 18, 1999 on behalf of workers at Leica Microsystems, Inc., Depew, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of July, 1999

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–21151 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,090 et al]

Mead Paper Corporation, Rumford, Maine et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 12, 1999, applicable to workers of Mead Paper Corporation, Rumford, Maine. The notice was published in the **Federal Register** on April 27, 1999 (64 22648).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur in September and December, 1999 at various support function facilities due to the company closing its' Specialty business operations. These facilities provide sales and marketing services for the production of predominantly groundwood coated paper at the Rumford, Maine location of Mead Paper Corporation.

The intent of the Department's certification is to include all workers of Mead Paper Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–35,090 is hereby issued as follows:

All workers of Mead Paper Corporation, Rumford, Maine (TA–W–35,090); and the Specialty business operations at the various locations cited below, who became totally or partially separated from employment on or after October 5, 1997 through February 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–35,090A Portland, Maine
TA–W–35,090B Arlington Heights, Illinois
TA–W–35,090C Augusta, Maine
TA–W–35,090D East Wakefield, New Hampshire
TA–W–35,090E Skowhegan, Maine
TA–W–35,090F Alburtis, Pennsylvania.

Signed at Washington, DC, this 5th day of August, 1999.

Grant D. Beale,

Progam Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21152 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 26, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 07/26/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,581	Phelps Dodge Hidalgo, Inc (Comp)	Playas, NM	07/19/99	Copper Anode.
36,582	Portland General Electric (Comp)	Portland, OR	07/15/99	Decommission Nuclear Power Plant.
36,583	Texas Jean Co (Wrks)	El Paso, TX	07/10/99	Jean Pants, Shirts, etc.
36,584	Dino/DLA (UNITE)	New York, NY	07/09/99	Men's and Ladies Jackets.
36,585	Jackie Evans Fashion, Inc (Comp)	Passaic, NJ	07/09/99	Ladies' Suits.
36,586	REDA, A Camco Co (Comp)	Bartlesville, OK	07/09/99	Electrical Submergible Pumps.
36,587	5B's Inc (Wrks)	Martinsville, VA	06/28/99	Embroidery.
36,588	Lorraine Wardy Enterprise (Wrks)	El Paso, TX	06/20/99	Ladies' Sportswear.
36,589	Kvaerner, Inc. (Wrks)	Houston, TX	07/01/99	Engineering Documents.
36,590	BioChem Immunosystems (Wrks)	Allentown, PA	07/12/99	Research & Medical Instrumentation.
36,591	Marietta Cutting L.L.C (Comp)	Marietta, OK	07/06/99	Men's Slacks.
36,592	Intermedics, Inc (Comp)	Angleton, TX	06/18/99	Medical Devices.
36,593	Shaer Shoe—Franklin (Wrks)	Farmington, ME	07/12/99	Women's Shoes.
36,594	Brazos Sportswear (Wrks)	Batavia, OH	07/13/99	Embroidered & Silk Screened Garments.
36,595	AMP, Inc (Wrks)	Harrisburg, PA	07/08/99	Connectors.
36,596	Ashmore Sportswear, Inc (Comp)	Leola, PA	07/07/99	T-Shirts.
36,597	Pelton Co. (Comp)	Penca City, OK	07/14/99	Seismic Electronic Equipment.
36,598	Pacific Softwoods (Wrks)	Philomath, OR	07/15/99	Wood.
36,599	Brazos Sportswear (Wrks)	Staten Island, NY	07/10/99	Knit Sportswear.
36,600	Copper Range Co (Wrks)	White Pine, MI	07/06/99	Copper.
36,601	Venco, Inc (Wrks)	Denver, Co	07/14/99	Petroleum & Natural Gas.
36,602	Tinsley Drilling & Co (Wrks)	Odessa, TX	07/14/99	Oil and Gas.
36,603	Snyder Area Contractor (Comp)	Snyder, TX	07/12/99	Oil and Gas.
36,604	Total Minatome Corp (Wrks)	Houston, TX	06/15/99	Oil and Gas.
36,605	Allegro Operating Inc (Comp)	Abilene, TX	07/12/99	Oil and Gas
36,606	Phillips Petroleum Co (Comp)	Bartlesville, OK	07/16/99	Oil and Gas.
36,607	Big ''6'' Drilling (Wrks)	Houston, TX	07/12/99	Oil and Natural Gas.
36,608	Western Gas Resources (Wrks)	Midland, TX	06/09/99	Oil and Gas.
36,609	Baker Hughes/Western Geo (Wrks)	Houston, TX	07/15/99	Seismic Data.

[FR Doc. 99–21155 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 586]

Reda, A Camco Company, Bartlesville, Oklahoma; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 26, 1999 in response to a worker petition on behalf of workers at REDA, A Camco Company, Bartlesville, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21149 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) H–1B Technical Skill Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: *This notice contains all of the necessary information and forms needed to apply for grant funding.* The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for skill training programs for unemployed and employed workers. Funding for these grants is coming from the user fee mandated for applicants for new H–1B nonimmigrant visa workers and established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA).

Eligible applicants for these grants will be private industry councils (PICs) established under Section 102 of the Job Training Partnership Act (JTPA), local Workforce Investment Boards (WIBs) established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through one-stop delivery systems established under section 121 of WIA, or regional consortia of PICs or local boards. Regional consortia may be interstate.

WIA provides a framework for a national workforce investment and employment system designed to meet both the needs of the nation's businesses and the needs of job seekers and workers who want to further their careers. ACWIA will provide resources for skill training in occupations that are in employer demand; one measure of this demand is employer H–1B applications for workers. In particular, industries that appear to generate the most H–1B demand include information technology and health. Appendix A to this Solicitation provides information on the kinds of occupations certified under the H–1B program by the Department of Labor for Fiscal Year 1999 (Oct.1, 1998 to May 1999), and the number of job openings certified in each occupation.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. It is anticipated that about $25 million will be available for funding the projects covered in this first-round solicitation, that approximately fifteen to twenty projects will be selected for funding, and that the maximum grant award will not exceed $1.5 million. There is a 50 percent non-Federal matching requirement.

DATES: Applications for grant awards will be accepted commencing August 16, 1999. The closing date for receipt of applications shall be 75 days after date of publication in the **Federal Register** at 4:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Diemle Phan, SGA/DFA 99–019, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll free number. All inquiries should include the SGA number (DFA 99–019) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

BACKGROUND: This initiative will build on recent ETA initiatives, specifically the June 1998 dislocated worker technology demonstration and the new dislocated worker technology demonstration. These two recent efforts were intended to strengthen linkages between employers experiencing skill shortages in specific occupations and the publicly funded workforce development system. In June 1998, $7.5 million in JTPA Title III dislocated worker funds was awarded to 11 organizations throughout the country to train workers in skills related to the information technology industry. In June 1999, over $9.57 million was awarded to 10 grantees to train dislocated workers in the skills necessary to obtain work requiring advanced skills in occupations in manufacturing industry settings, including computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, specialized instruments and devices, and biomedics.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of demonstration projects to provide technical skills training for workers, including both employed and unemployed workers.

This announcement consists of three parts:

- Part I discusses the procedures for eligible applicants who wish to apply for these funds.
- Part II provides the detailed Statement of Work together with applicable reporting requirements.
- Part III describes the selection process/criteria for award.

Legislative Mandate

The relevant portions of ACWIA dealing with the establishment of a fund for implementing a program of H–1B skill training grants state:

''Section 286(s)—H–1B Nonimmigrant Petitioner Account

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the ''H–1B Nonimmigrant Petitioner Account.'' Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

(2) Use of Fees for Job Training—56.3 percent of amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary

of Labor until expended for demonstration programs and projects described in section 104(c) of the American Competitiveness and Workforce Improvement Act of 1998.''

Section 104(c) Demonstration Programs and Projects To Provide Technical Skills Training for Workers.—

(1) In General—In establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs of projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall use funds available under section 286(s) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) Grants—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C.1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A).

The Immigration and Nationality Act (INA)(section 101(a)(15)(H)(i) (b)) defines the ''H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation or as a fashion model.''

The INA (Section 214(i)) sets criteria to define the term ''specialty occupation:''

(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph 2, a ''specialty occupation'' means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

(2) For purposes of section 101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—

(A) full state licensure to practice in the occupation, if such licensure is required.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Part I—Application Process

A. Eligible Applicants

ACWIA specifies under Section 104(c)(2) that the Secretary shall award grants to private industry councils (PICs) established under section 102 of the Job Training Partnership Act (JTPA), or local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act (WIA) of 1998, or regional consortia of councils or local boards.

While the statute is quite specific about the fact that only PICs, local boards and consortia may apply for and receive these grant awards, it does not preempt the participation of other concerned entities which are integral to the process of planning for and conducting skill training in skill shortage areas. The Department of Labor is requiring that eligible applicants must demonstrate that they have the involvement of a wide representation of the business community in their region. They are also strongly encouraged to reach out widely and involve a broad spectrum of other organizations such as labor unions, community colleges and other postsecondary educational institutions, and community based organizations in a partnership or consortium arrangement. Applicants are encouraged to associate with entities which possess a sound grasp of the job marketplace in the region and which are in a position to address the issue of skill shortage occupations. Such organizations would include private, for profit businesses—including small- and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. Also, those entities should include businesses and business associations which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations. This Solicitation will not prescriptively define the roles of individual entities within the partnership beyond requiring, as ACWIA states, that the PICs, local workforce investment boards, or consortia be the applicant and the recipient of grant funds. It is anticipated, however, that the proposal will provide a detailed discussion of participating organizations' respective responsibilities. The proposal should describe a consortium of several employers that will lead the consortium and provide matching funds and who intend to employ workers participating in the technical skills training.

Based on Department of Labor experiences, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be successful. In general, applicants will be encouraged to include a broad spectrum of stakeholder groups, including such employers, in their partnership effort. Also, PICs or local workforce investment boards or consortia thereof representing more than one region that share common economic goals may band together as one applicant rather than applying individually.

A signed certification of the authorized signatory for a PIC or a local workforce investment board, or the authorized signatory for each PIC or local board in the case of a consortium, is required. The attestation must identify who the grant recipient is and describe its capacity to administer this project; it shall also indicate that the project is consistent with and will be coordinated with the workforce investment system(s) that are involved in technical skills activities in the region(s) encompassed by the applicant.

Part III of this announcement enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. Briefly, these criteria are:

- Statement of Need
- Service Delivery Strategy
- Target Population
- Linkages with Key Partners/ Sustainability
- Outcomes
- Cost Effectiveness

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

- Part I of the proposal shall contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix B) and the Budget Information Form (Appendix C). The individual signing the (SF) 424 on behalf of the applicant shall represent the responsible financial and administrative entity for a grant should that application result in an award. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. According to the

Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

In preparing the Budget Information Sheet, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA is specific and exclusive in stating that grant resources are to be expended for programs or projects to provide technical skills training. Therefore, no ACWIA grant resources may be utilized for the costs of administration. The budget narrative should discuss precisely how the costs of necessary administration are being borne by non-ACWIA resources. To the extent that these resources are non-Federal in nature, they may comprise part of the match.

Part II must contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5 inch × 11 inch pages with 1-inch margins. The Offeror may provide statistical information and related material in attachments. Attachments may not exceed fifteen (15) pages. Letters of commitment from partners or from those providing matching resources may be submitted as attachments; however, letters of support are not required. Such letters will not count against the allowable maximum page total. The Applicant must briefly enumerate those entities in the text of the proposal. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 25 page limit. No cost data or reference to price is included in the technical proposal.

C. Hand Delivered Proposals

If proposals are hand delivered, they must be received at the designated place by 4:00 p.m., Eastern Time [insert date x number of days after date of publication in the **Federal Register**]. All overnight mail will be considered to be hand delivered and must be received at the designated place by 2:00 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The initial period of performance will be up to 24 months from the date of execution of the grant documents. It is anticipated that about $25 million will be disbursed. It is also anticipated that 15–20 grant awards will be made for up to $1.5 million. Based on successful performance and the availability of resources, these grants may be extended for an additional period not to exceed 36 months in total.

F. Definitions

For purposes of this solicitation:

- *Technical skills training* includes occupational skills training—that may combine academic and work-place learning and related instruction, customized training with a commitment of an employer or group of employers to employ an individual upon successful completion of training, and that may be tailored to meet the needs of the individual participant. Section 134 (d)(4)(D) of WIA provides a definition of training services that shall be viewed as generally applicable to the term ''technical skills training'' in this Solicitation. This definition of technical skills training specifically allows the use of grant funds to provide necessary books.
- *Region* means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with a couple of adjacent rural districts, a few special purpose districts, or a few contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.
- *Younger workers (ages 18–24) who may have fewer educational or occupational credentials* means those individuals who have the educational or occupational credential level enumerated in Sec. 101 (33) of WIA (which, in another context, is employed to describe an ''out of school youth''). Specifically, that definition refers to a school dropout or someone who has received a secondary school diploma or its equivalent but is basic skills deficient, unemployed or underemployed.

G. Matching Requirement

No applicant may receive a grant unless that applicant agrees to provide resources equivalent to at least 50 percent of the grant award amount as a match. That match may be provided in cash or in kind. In view of the fact that the singular focus of grant resources is to provide skill training, ETA particularly encourages the provision of essential capital equipment, such as computer equipment, as part of the match. The match will not be tied to the drawdown of funds, however, the amount and nature of it must be clearly described in the application.

Part II—Statement of Work/Reporting Requirements

A. Principles

Six basic key principles underlie this effort:

- *Local Board (or PIC) Participation:* The initiative should help local boards achieve the goals of their strategic plans established under WIA. While this legislation requires that the local board or PIC or a regional consortium of boards or PICs be the eligible applicant, this Solicitation encourages local boards or PICs to move beyond simply being the applicant and become actively engaged in the design and implementation of this grant and, thus, reinforce and strengthen the delivery systems emerging under the Workforce Investment Act of 1998. This concept ties in clearly to two rating criteria: Service Delivery Strategy (What is the range of potential training providers?; How will the types of training planned for project participants be determined?) and Links with Key Partners/ Sustainability (What role each partner in the endeavor will play).

• *Partnership Sustainability:* The grant awards will be of relatively short duration—up to 24 months. Although the primary focus of these awards is technical skill training, ETA intends that regional partnerships sustain themselves over the long term—well after the federal resources from this initiative have been exhausted. The 50 percent non-Federal matching requirement is an integral part of ensuring sustainability; matching resources will help sustain the skill shortages training effort beyond the term of the grant. This concept relates to Links with Key Partners/Sustainability (What resources does each partner bring to the table and how does this contribution assist in building the foundation for a permanent partnership?)

• *Business Involvement:* Business is an essential partner. It articulates skill requirements, hires skilled workers, and provides support for lifelong learning. Under WIA, business plays a critical role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of State and local boards be business representatives, and that the State and local board chairs be drawn from business. For the purpose of these grants, it is imperative that businesses represented include businesses with current skill shortages who intend to hire graduates of the technical skills training. This concept relates to three Rating Criteria: Statement of Need (Assists in determining what skill shortage occupations are in demand in the region), Linkages with Key Partners/ Sustainability (What private sector involvement is there in the partnership; what resources does each of the partners bring to the table; how do contributions assist in building the foundation for a permanent partnership?), and Outcomes (Businesses involved in the partnerships will provide a key resource in hiring/ upgrading workers who have been trained).

• *Current Skills Gap:* Current skill shortages are the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as skill shortage areas. This concept relates to Statement of Need (The most important issue to be addressed under this section is identifying the particular skill shortages that manifest themselves in the region . . .) and Service Delivery Strategy (How will skill training meet the skill needs of the region.)

• *Innovative and Effective Tools:* The grantees will use innovative or proven tools and approaches to close particular skills gaps and provide strategies for training that promote regional development. This concept relates to Service Delivery Strategy (There can be innovation in the way training services are provided.) and Cost Effectiveness (Innovative tools and approaches may more effectively deliver training services to individual participants thereby resulting in better employment outcomes and higher levels of skill achieved by those participants for the same cost.)

• *Target Population:* This initiative should reach out widely to include all segments of the workforce—for example, high- and low-skilled workers, minorities, women, and people with disabilities. The primary emphasis of the ACWIA technical skills training will be to focus on workers who can be placed directly in the highly skilled H–1B occupations. However, linked resources under WIA, JTPA, and other similar programs will be used to train individuals so they can secure immediate jobs that launch them on H–1B occupation-related career paths. This relates to the rating criterion, Target Population (Discussion of who the targeted workers are.)

B. Skills Shortages

Section 104(c) of ACWIA mandates that the grants awarded under this authority be used for technical skill training to employed and unemployed workers. The basis of the funding for the grants, however, is a user fee paid by an employer seeking nonimmigrant alien workers (H–1B) that possess qualifications in occupations with skill shortages at high skill levels in American industry. Thus, training conducted under these auspices should be in occupations that have been demonstrated to be in short supply.

What is a labor shortage? In the simplest terms possible, shortages occur in a market economy when the demand for workers for a particular occupation is greater than the supply of workers who are qualified, available, and willing to do that job. Although, some of the explanations for why this demand or supply disequilibrium exists are fairly complex, the basic concept is straightforward. In many instances, labor markets adjust quickly and the skill shortage is resolved.

Problematic skills shortages occur when there is imbalance between worker supply and demand for an unusual period of time. The H–1B visa program is a response to those shortages, and this skill training grant program helps alleviate such shortages. It should be noted that the concept of skill shortages also may include an imbalance between the demand and supply of workers at some definable skill level.

C. Skills Standards

As noted earlier, the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i) of INA, speaks to a very high skill level for these ''specialty occupations'' (8 U.S.C. 1184 (i)). To reiterate, these are occupations that require ''theoretical and practical application of a body of highly specialized knowledge,'' and full state licensure to practice in the occupation (if it is required). These occupations also must require either completion of at least a bachelor's degree or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In examining the occupational goals to target the training, it may be appropriate for applicants to identify intermediate occupational skill-level steps that linked resources will assist in addressing. To the extent that applicants target younger workers (age 18–24) or low wage workers who may have fewer educational and occupational credentials, it is important that the applicant spell out career paths which will help individuals acquire the high proficiency levels explicitly and implicitly contained in the H–1B occupations.

Skill standards represent a benchmark by which an individual's achieved competence can be measured. Much work has been done in this area—some by private industry and trade associations, some by registered apprenticeship training systems, some by public and private partnerships, including local School-to-Work partnerships, and the Job Corps. Succinctly stated, well-defined skill standards can be a useful tool in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their communities. Do companies that will be seeking skilled workers for H–1B occupations have a clearly defined set of expectations for the requisite capabilities of those workers?

D. Regional Planning

Applicants must describe the local area or region that will be served. The proposal must also identify the political jurisdictions to be included as well as provide an enumeration of the specific local areas under JTPA or WIA. This description should include a discussion of skill shortages in the local area or region. Although comprehensive occupational vacancy data do not exist, current H–1B applicant data should be utilized to the extent feasible to describe occupational shortages. Attachment A to this Solicitation is a listing by occupation of the most current H–1B applicant data. Applicants may take into consideration that occupations listed in high demand among those for which H–1B visas were sought nationally also might be in short supply in their region.

However, applicants should avail themselves of all available local data including data provided by area businesses and business associations in making determinations as to shortages. They are encouraged to research widely and be inclusive in utilization of labor market information. In addition to the sources already described, applicants are encouraged to analyze data made available by the Bureau of Labor Statistics and through the local One-Stop delivery system.

E. Service Delivery and Supportive Services

Applicants should carefully describe skill training in context of the goals that are to be achieved by participants. These goals should be expressed in terms of targeted occupations. The Statement of Work should provide a detailed discussion of the kinds of training to be provided and the mechanisms to be used to provide it. Applicants also should build linkages to the One-Stop system established under WIA to reach out, inform, and recruit individuals to participate in the H–1B financed training. It is expected that the applicant's work statement will include a discussion of the types of skills being trained for, the necessary skill levels that are targeted, how they will be measured, and how skill shortages in the local area or region will be met through this training

The central role of the local boards or PICs in the planning and policy activity surrounding these grants is critical. WIA requires the local board to prepare a strategic workforce investment plan for the area that it embraces. The local board also designates One-Stop service center operators and selects eligible training providers. In short, local boards are already engaged in much of the necessary work that could provide a solid foundation for the training activities to be undertaken in ACWIA. The PIC under JTPA is very much in a similar role except that the PIC may provide direct services; under WIA however, the presumption is that local boards only provide services under certain circumstances and for a limited time period.

ACWIA requires that grant resources be used solely for technical skills training. However, ETA anticipates that applicants may need to make available a range of supportive services to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, however—such as transportation or child care and others defined by section 4(24) of JTPA and section 101(46) of WIA—could be viewed as an important factor enhancing the technical skills training package. To the extent that these services are provided utilizing non-Federal resources, applicants may present them as part of the proposed matching requirement. Federal resources such as coenrollment in WIA or JTPA while participating in ACWIA training for supportive services clearly cannot be counted toward the matching requirement; however, such coordinated coenrollment and services are clearly desirable features of these projects. Successful applicants are encouraged to leverage such Federal resources as part of making the technical skills training more effective.

F. Reporting Requirements

The Grantee is required to provide the reports and documents listed below:

• Quarterly Financial Reports. The grantee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report (SF269) until such time as all funds have been expended or the period of availability has expired.

• Progress Reports. The grantee must submit brief narrative quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report provides a detailed account of activities undertaken during that quarter including:

a. A discussion of occupational areas for which skill training is being provided,

b. Job placements in skill shortage occupations, and

c. An indication of any current problems which may affect performance and proposed corrective action.

• Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration shall be submitted no later than the expiration date of the grant. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date.

G. Evaluation

ETA will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of ETA.

Part III—Review Process & Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

A. Statement of Need (20 Points)

The underlying statute authorizing this competitive grant program—ACWIA—is a response to skill shortages around the country in specific occupations. ETA has provided the most recent H–1B application data as an attachment to this solicitation. The most important issue to be addressed under this section is identifying, to the extent possible, the particular skill shortages that manifest themselves in the region that is encompassed by the application. Applicants are encouraged to utilize all available data resources—H–1B applications, newspaper want ads, expressed employer consortium hiring desires, and One Stop system's labor market information—in responding to this criterion.

To provide a focused backdrop for the discussion of skill shortages, applicants should describe clearly the region for which services are to be provided. What are the characteristics that make this area a cohesive region? What are the particular characteristics of the local political, economic and administrative jurisdictions—PICs, local workforce investment boards, labor market areas, special district authorities—that caused them to associate for the purpose of this application?

There are several useful items of information that could be provided to enhance the description of the region. A general discussion of the region should include socioeconomic data—with a particular focus on the general education and skill level prevalent in the area. Also, it is useful to include such items as transportation patterns, demographic information (such as age and general income of residents). Judicious use of statistical information is encouraged. Other pertinent questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing, and which ones are contracting? What are the characteristics of the major employers in the region? What is the particular situation of the consortium member companies?

B. Service Delivery Strategy (22 points)

Applicants must lay out a comprehensive strategy for providing the technical skills training that is mandated as the core activity of these grant awards. Concomitantly, there needs to be a discussion of how this skill training will meet the skill needs of the region. Several specific issues must be focused on as part of this section. Those issues include:

What is the range of potential training providers, what kinds of skill training will be offered, how will that meet the regional skill needs, and how will training be provided? How will the types of training planned for project participants be determined? Also, although there is a separate section on outcomes, it is strongly recommended that some brief mention in context of the service delivery strategy, be made of them here. Such outcomes would include job placements in skill shortage occupations, increased salary, and measurable skill gains or certificates obtained that demonstrate how the training will alleviate skill shortages.

Supportive services, per se, are not an allowable activity with grant funds. However, making such services available on an as needed basis (utilizing other available resources) is encouraged.

Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—e.g., distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged.

C. Target Population (18 Points)

The eligibility criterion for skill training enumerated in ACWIA is extremely broad—employed and unemployed workers. This section should include an extensive focused discussion of who the targeted workers are, including their characteristics, and why they are being targeted. A discussion of what assessment procedures are to be used is integral.

In the case of employed workers, there should be some articulation of what is to be accomplished. The applicant should address some specific issues relating to the target employed worker population such as:

—How many employed workers will be targeted for services and why?
—What are the technical skills training needs of those workers to fulfill skill shortage occupations?

In the case of unemployed workers, there needs to be an extensive discussion of criteria to be used to assess and enroll individuals. It is true that the target occupations and specific jobs to be trained for within the H–1B rubric are statutorily geared to a very high skill standard.

However, applicants are encouraged to identify intermediate skill level steps (or in the words of the INA—''progressively responsible positions relating to the specialty'' (8 U.S.C. 1184(i)(2)(c)(2)) so that linked resources—e.g., from WIA, JTPA, and other similar programs—may be used to train younger less skilled workers to ''back fill'' those positions.

In this light, ETA is interested in opening opportunities for these positions to younger workers (ages 18–24) who may have fewer educational or occupational credentials, individuals with disabilities, or low-wage workers. ETA also is very interested in serving underrepresented communities and populations, particularly those that may reside in Empowerment Zones and Enterprise Communities (EZ/ECs).

Applicants are strongly encouraged to describe in detail how linked resources will meet the needs of individuals in these groups. Applications are also strongly encouraged to target one or more of these groups and describe in realistic terms the training goals that can be attained by that group(s). The businesses that will employ these individuals do not need to be located in the EZ or EC.

D. Linkages With Key Partners/ Sustainability (17 Points)

The applicant should enumerate who the partners are in this endeavor and how they will link together—i.e., what role each will play. In particular, this section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations.

The Service Delivery Strategy section of the Statement of Work described the role each of the actors would play in providing services. This section looks at the linkages from a somewhat different more structural perspective with particular emphasis on the employers in the consortium that are experiencing skill shortages. What resources does each partner bring to the table? The application will specify a management entity (together with a staffing pattern and resumes of major staff members) and will articulate with some precision the roles of various actors. A short portion of this discussion should dwell upon the organizational capacity and track record of the primary actors in the partnership.

There is a 50 percent matching requirement. To what extent does any of these partners provide matching funds or services and how does this contribution assist in building the foundation for a permanent partnership, i.e., sustainability?

As noted earlier, Federal resources cannot be counted against the matching requirement; however, it is important that such resources be provided as part of the project because they certainly support and strengthen the quality of the technical skills training provided in the project and contribute materially toward sustainability. Because ACWIA resources are limited to training individuals to fill high skill H–1B jobs, it is vitally important that applicants link job training resources under JTPA, WIA and other similar programs so that individuals possessing lesser levels of educational and/or occupational skills may also benefit from this initiative. For example, local boards could commit through One-Stop centers such valuable participant services as participant assessment and case management. Applicants are encouraged to enumerate these leveraged resources under this section as examples of leveraged resources. This section should also enumerate any specific existing contractual commitments.

Briefly stated, the sustainability issue can be addressed by providing concrete evidence that activities supported by the demonstration grant will be continued after the expiration date of the grant using other public or private resources.

E. Outcomes (15 Points)

Applicants must describe the predicted outcomes resulting from this training. It is posited that the projected results will be somewhat varied given the broad range of people that will probably be served. For example, employed workers may be trained to achieve a higher skill level than most unemployed workers. Their success could manifest itself through job placements in H–1B skill shortage occupations, increased wages, or skill attainment in H–1B occupations.

By contrast, using linked WIA or JTPA resources, unemployed workers, particularly those in the underrepresented groups discussed above, might be trained to ''backfill'' the jobs previously occupied by the incumbent workers whose skills have been upgraded. These unemployed individuals may be measured in terms of gaining employment as well as skills attainment. There also could be an effort to project target salary levels for them as a result of the training received.

There are, however, unemployed workers who may well already possess a very high skill level. They could receive refresher technical skills training to update their skills. The outcomes for this group may also be projected in terms of gaining employment and skills attainment; those outcomes would simply be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset.

Ideally, the applicant's outcomes section will describe some version of a relatively cohesive mosaic that weaves together the outcomes for both employed and unemployed workers in the context described in the preceding three paragraphs. Additionally, the outcomes section should focus very specifically on the changes that occur because of the training. Thus, an applicant might state that a certain skill level is projected for a given group; but the applicant should couch that outcome in context of what the initial pre-training skill level had been for the group.

F. Cost Effectiveness (8 Points)

Applicants will provide a detailed cost proposal including a discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attaining State licensing in an occupation) relative to the amount of training that the individual had to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained.

This section must contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the 50 percent match requirement will be considered nonresponsive.

Applicants are advised that discussions and/or site visits may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Signed in Washington, D.C. , this 10th day of August 1999.

Laura Cesario,

Grant Officer.

Appendix A—Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998–May 31, 1999)

Occupational code	Occupational title	Number of openings certified
030	Occupations In Systems Analysis And Programming	360,745
076	Therapists	181,665
160	Accountants, Auditors, And Related Occupations	35,665
039	Other Computer-Related Occupations	28,529
003	Electrical/Electronic Engineering Occupations	16,859
070	Physicians And Surgeons	11,264
019	Other Occupations In Architecture, Engineering And	11,175
090	Occupations In College And University Education	9,028
199	Miscellaneous Professional, Technical, And Manager	8,964
189	Miscellaneous Managers And Officials	8,824
007	Mechanical Engineering Occupations	7,115
050	Occupations In Economics	5,608
163	Sales And Distribution Management Occupations	5,368
033	Occupations In Computer Systems Technical Support	4,573
161	Budget And Management Systems Analysis Occupations	4,263
169	Other Occupations In Administrative Occupations	4,135
031	Occupations In Data Communications And Networks	4,121
041	Occupations In Biological Sciences	3,981
079	Other Occupations In Medicine And Health	3,764
012	Industrial Engineering Occupations	2,725
186	Finance, Insurance And Real Estate Managers And Off	2,624
020	Occupations In Mathematics	2,599
001	Architectural Occupations	2,490
141	Commercial Artists: Designers & Illustrators, Graphics	2,371
297	Fashion Models	2,367
092	Occupations In Preschool, Primary, Kindergarten Ed.	2,359
187	Service Industry Managers And Officials	2,347
022	Occupations In Chemistry	2,345
005	Civil Engineering Occupations	2,186
032	Occupations In Computer System User Support	1,595

Occupational code	Occupational title	Number of openings certified
091	Occupations In Secondary School Education	1,579
110	Lawyers	1,353
029	Other Occupations In Mathematics And Physical Sciences	1,306
131	Interpreters and Translators	1,270
166	Personnel Administration Occupations	1,229
165	Public Relations Management Occupations	1,216
185	Wholesale And Retail Trade Managers And Officials	1,183
008	Chemical Engineering Occupations	1,075
168	Inspectors And Investigators, Managerial & Public	974
142	Environmental, Product And Related Designers	955
119	Other Occupations In Law And Jurisprudence	882
099	Other Occupations In Education	841
023	Occupations In Physics	836
010	Mining And Petroleum Engineering Occupations	777
164	Advertising Management Occupations	773
132	Editors: Publication, Broadcast, And Script	748
078	Occupations In Medical And Dental Technology	699
183	Manufacturing Industry Managers And Officials	681
184	Transportation, Communication, And Utilities Management	659
049	Other Occupations In Life Sciences	612
162	Purchasing Management Occupations	604
040	Occupations In Agricultural Sciences	574
074	Pharmacists	508
159	Other Occupations In Entertainment And Recreation	506

Technical Note: The Immigration and Nationality Act (Act) assigns responsibility to the Department of Labor with respect to the temporary entry of foreign professionals to work in specialty occupations in the U.S. under H–1B nonimmigrant status. Before the Immigration and Naturalization Service will approve a petition for an H–1B nonimmigrant worker, the employer must have filed and had certified by the Department a Labor Condition Application. The employer must indicate on the application the number of H–1B nonimmigrant workers sought, the rate of pay offered to the nonimmigrants, and the location where the nonimmigrants will work, among other things.

The Act limits the number of foreign workers who may be assigned H–1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas. This excess in the number of certified openings is due to a number of factors: extension of status filings that are not subject to the annual cap; openings certified for anticipated employment that does not transpire; or movement from one employer to another (again, not subject to cap).

The occupational codes in the left-hand column represent the three-digit occupational groups codes for professional, technical and managerial occupations from the Dictionary of Occupational Titles (DOT).

BILLING CODE 4510–30–P

APPENDIX B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): ____________

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ____________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel:* *Show salaries to be paid for project personnel.*
2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*
3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*
4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*
5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*
6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*
7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*
8. *Total, Direct Costs: Add lines 1 through 7.*
9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*
10. *Training /Stipend Cost:* *(If allowable)*
11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–21143 Filed 8–13–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03237]

Horner Flooring Company, Incorporated, Dollar Bay, Michigan; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 6, 1999 in response to a petition filed by the company on behalf of workers at Horner Flooring Company, Incorporated, Dollar Bay, Michigan.

The petitioner has requested that the petition be withdrawn until such time as the workers will be laid off. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21150 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3093]

Thompson Crown Wood Products, Mocksville, North Carolina; Notice of Revised Determination on Reopening

By letter of July 14, 1999, a company official requested reconsideration of the Department's negative determination applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 17, 1999, because worker separations at Thomson Crown Wood Products in Mocksville, North Carolina were attributable to a change in the manufacturing process at the plant which required fewer workers to manufacture television cabinets produced at the plant. Additionally, production increased as employment declined during the relevant time period. The denial notice was published in the **Federal Register** on July 20, 1999 (64 FR 38922).

New information obtained from the company shows that the assembly of television cabinets that was performed by the workers in Mocksville, North Carolina, has been shifted to Mexico.

Conclusion

After careful consideration of the new facts obtained on reconsideration, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers to Thomson Crown Wood Products, Mocksville, North Carolina, who became totally or partially separated from employment on or after April 8, 1998, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21147 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003256]

Trim Master, Inc., Rancho Cucamonga, California; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on June 7, 1999, in response to a petition filed on behalf of workers at Trim Master, Inc., Rancho Cucamonga, California. Workers produce wood trim for the automotive industry.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 6th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–21145 Filed 8–13–99; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9015]

Notice of Issuance of Environmental Assessment, Finding of No Significant Impact, and Opportunity for Hearing for Michigan Department of Natural Resources License at Tobico Marsh Site

The U.S. Nuclear Regulatory Commission is considering issuance of a license to Michigan Department of Natural Resources (MDNR) to possess thorium (Th) and uranium (U) at the state-owned portion of the former Hartley and Hartley Landfill (Tobico Marsh site) in Kawkawlin, Michigan. The license application was submitted on September 5, 1997, as supplemented on July 27, 1998, and March 8, 1999. The Th and U currently exist at the MDNR Tobico Marsh site in the form of magnesium-Th slag, contaminated soil, and other material and debris contaminated above background levels. MDNR also requested to include possession of sealed sources for instrument calibration on a license.

Environmental Assessment

Introduction

MDNR submitted a source material license application to possess Th and U at the Tobico Marsh site. The site is located at 2301 Two Mile and Beaver Roads, Kawkawlin Township, Kawkawlin, Bay County, Michigan, northeast of Bay City, Michigan. The Tobico Marsh site covers approximately 3 acres (1.2 hectare) adjacent to the former Hartley and Hartley Landfill that is currently owned by SCA Services, Inc. (SCA). The SCA site is being decommissioned under NRC License No. SUC–1565. In 1962, it was discovered that the entire property, owned by the Hartley and Hartley waste handling company, was being used as a landfill.

In 1972, the State of Michigan acquired in trade a portion of the Hartley and Hartley Landfill. Waste disposal activity on the state-owned portion of the site ended by 1972, but the Hartley and Hartley organization continued to operate the site until 1978 when operations at the landfill ceased.

In 1980, the State of Michigan conducted an aerial radiological survey of the landfill because State authorities were concerned that radioactive material from another facility in Michigan may have been disposed at the landfill. The survey indicated an excess of Thallium-208, a progeny of Thorium-232 (Th-232), over the landfill. In May

1983, the State of Michigan, Division of Radiological Health, informed NRC Region III that radioactive material was found in the Tobico Marsh site. Contamination was also found on the adjacent property owned by SCA.

The State of Michigan requested input from the NRC on whether the encapsulation measures being taken for the non-radiological hazardous wastes also would provide protection for the radioactive hazard. In response to this request, NRC staff agreed to perform a radiological survey of the Tobico Marsh site.

In July 1984, Oak Ridge Associated Universities undertook a radiological survey of the Tobico Marsh site. The survey included surface radiation scans, measurements of direct radiation levels, and analyses of radionuclide concentrations in soil, sediment, and water samples. The results of this survey indicated a 0.15 to 0.20-meter (m) (0.5 to 0.7 feet (ft)) thick layer of Th contaminated slag near the surface. The contaminated slag appeared to be distributed in a 10 to 20-m (33 to 66-ft) wide strip near the center of the property, extending almost the entire north/south length of the site.

NRC and State of Michigan staff concluded, on the basis of the radiological survey, that the Th contamination exceeded the Option 1 level (0.37 Becquerel per gram (Bq/g) (10 picoCurie per gram (pCi/g)) of Thorium-232 + Thorium-228) of the 1981 Branch Technical Position (BTP) entitled, ''Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations'' (46 *FR* 52061). They also concluded that the mixture of non-radiological hazardous and radioactive waste would make the wastes unacceptable at a chemical or radioactive waste disposal site (other than an authorized mixed waste disposal facility) and agreed to implement a monitoring program and to place a restriction on the deed prohibiting intrusion. NRC agreed that these measures would likely make the encapsulation of the Th contamination acceptable for the short term.

In 1984, MDNR undertook encapsulation measures at the Tobico Marsh site to isolate and prevent the migration of the non-radiological hazardous wastes. Encapsulation measures included the installation of a 1.5-m-thick (5-ft) clay cap and 0.9-m-thick (3-ft) bentonite slurry walls.

In 1985 and 1986, ABB Environmental Services, Inc. (formerly E.C. Jordan Company) performed an investigation to assess the nature and extent of environmental contamination around the encapsulation area. The investigation indicated that the level of leachate inside the encapsulation was approximately 0.9 m (3 ft) higher than the level of the surrounding area and that volatile organic chemicals were detected in the soils and groundwater outside the encapsulation.

In 1987 and 1988, GZA/Donohue performed a feasibility study of the Tobico Marsh site. The study recommended that site access be restricted by fencing, that monuments be installed stating the nature of the contaminants, that the clay cap be repaired where erosion had occurred, that hydraulic isolation be maintained by withdrawal of leachate from inside the encapsulated area, and that the leachate be treated and disposed.

In March 1990, the MDNR Tobico Marsh site was added to NRC's Site Management Decommissioning Plan (SDMP) list because of the quantity of Th-contaminated materials, the potential for mixed waste, and the fact that MDNR did not have a license. The purpose of the SDMP is to ensure safe and timely remediation of nonroutine decommissioning sites.

In 1991, design of the Leachate Collection and Treatment System (LCTS) and preliminary design of the pretreatment system was completed. In 1993 and 1994, the LCTS, treatment building, and the force main were installed. However, the LCTS has not operated for several reasons. They include possible presence of low-level radioactive materials in the leachate, insoluble radioactive material less than or equal to one µm (3.3 µft) in diameter in the treated effluent, no holding tanks to verify effluent quality before discharge to the waste water treatment plant, and potential metal concentrations that are unacceptable for the waste water treatment plant.

Proposed Action

The primary purpose for issuing Source Material License No. SUC–1581, is to authorize MDNR to possess source material Th and U and sealed sources at the Tobico Marsh site in order to control the material to ensure the protection of the public health and safety and the environment. The license covers all source material Th and U present in concentrations exceeding natural background. This license also authorized possession of sealed sources at the site for instrument calibration. The sealed sources allow proper calibration of instruments for the radiation types to be encountered at the site.

MDNR proposes to sample Th and U material during site characterization activities. The proposed site characterization is intended to characterize the concentration, lateral extent, and volume of radiologically contaminated material at the Tobico Marsh site. The decommissioning alternatives for this site will depend on the information obtained from the site characterization.

At a later date, MDNR will provide proposal(s) for the disposition of any Th and U material found at the site in a Decommissioning Plan (DP). The DP will describe remediation alternatives and the proposed procedures for site remediation, final survey, and license termination.

The Need for the Proposed Action

Th and U exist on the Tobico Marsh site in concentrations that pose a long-term risk to the public and the environment. Before encapsulation measures were taken in 1984, Th-232 and Th-228 had been identified in the soil in concentrations up to 20.8 Bq/g (561 pCi/g) and 9.5 Bq/g (527 pCi/g), respectively. U–238 concentrations were elevated in samples with elevated Th levels.

MDNR applied for a specific license to possess, use, or transfer Th and U during site characterization activities because U–238, Th-228, and Th-232 activity levels may result in doses substantially in excess of the unrestricted release requirements in 10 CFR Part 20. The issuance of License No. SUC–1581 would ensure that the radioactive material at the Tobico Marsh site is possessed, used, or transferred in accordance with NRC regulations, and that MDNR will have a structured regulatory program in place to protect public health and safety.

Alternatives to the Proposed Action

NRC staff considered no action as an alternative to the proposed action. The no-action alternative would result in no specific license and would not ensure MDNR will have a structured regulatory program in place to protect public health and safety.

Environmental Impacts of the Proposed Action

The activities that NRC staff proposes to authorize through the issuance of License No. SUC–1581 are expected to have an insignificant impact on the environment. In fact, the activities are anticipated to improve control of the Th and U-contaminated material. The control of the Th and U-contaminated material under license will reduce the potential for the release of radiological contamination to the environment.

During the proposed site characterization, the primary potential radiological impact on the environment would be the release of radioactive material during excavation and handling of contaminated materials. No waste water that is contaminated with radionuclides above the 10 CFR Part 20, Appendix B limits, will be allowed to be discharged to sewers and drains from the site.

The proposed activities that would be licensed at this site are for the purpose of controlling and characterizing the radiologically contaminated material. Because MDNR has committed to comply with NRC requirements, has adequate radiation protection procedures and capabilities, and will implement an acceptable as low as is reasonably achievable (ALARA) program, the proposed actions are not anticipated to result in a dose to workers or the public in excess of 10 CFR Part 20 limits. Past experiences with site characterization activities at sites similar to the MDNR Tobico Marsh site indicate that public and worker exposure will be far below the limits found in 10 CFR Part 20.

The proposed action will result in the irreversible use of energy resources during excavation and handling of contaminated material. There are no reasonable alternatives to these resource uses and there are no unresolved conflicts concerning alternative uses of available resources.

Agencies and Individuals Consulted

This environmental assessment (EA) was prepared entirely by NRC staff. The staff from the State of Michigan Department of Environmental Quality (MDEQ) and MDNR reviewed a draft of this EA. MDEQ had no comments. MDNR has suggested editorial corrections and noted that the presence of U–238 has not been unequivocally proven at the Tobico Marsh site in the Need for Proposed Action section. Their comments have been incorporated in this version. No other sources were used beyond those referenced in this EA.

Conclusions

Issuance of Source Material License No. SUC–1581 to authorize the possession and control of source material located on the MDNR Tobico Marsh site will have an insignificant impact on the environment. Proposed activities at the site are designed to improve control and reduce the potential for release of radiological contamination to the environment. In addition, based on information to be gathered at the site, the licensee will develop a plan for the cleanup of radiological contamination at the site.

Finding of No Significant Impact

NRC has prepared this EA related to the proposed license application by MDNR for the Tobico Marsh site. On the basis of the EA, NRC has concluded that this licensing action would not significantly affect the quality of the environment and has determined not to prepare an environmental impact statement for the proposed action.

Opportunity for a Hearing

NRC hereby provides notice that this is a proceeding on an application for a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Michigan Department of Natural Resources, P.O. Box 30028, Lansing, MI 48909, Attention: Ms. Kelli Sobel; and

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, copies of the license application dated September 5, 1997, the complete EA, and supporting documentation are available for inspection at NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555–0001.

For Further Information Contact: Ms. Sherry W. Lewis, General Engineer, Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards. Telephone: (301) 415–6619.

Dated at Rockville, Maryland, this 9th day of August 1999.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–21179 Filed 8–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: September 14–15, 1999—Arlington, Virginia: Review of the Department of Energy's Safety Strategy for a Potential Repository at Yucca Mountain, Nevada, and of Scientific Studies Undertaken at the Yucca Mountain Site

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will hold a meeting on Tuesday and Wednesday, September 14 and 15, in Alexandria, Virginia, to review the U.S. Department of Energy's (DOE) waste isolation and containment strategy for a potential repository at Yucca Mountain, Nevada. The meeting will be open to the public.

The meeting will be held at the Ramada Plaza Hotel, 901 North Fairfax Street, Alexandria, Virginia 22314–1501. The telephone number is 703–683–6000. The Board meeting sessions will begin at 9 a.m. on both days.

On the morning of September 14, the DOE will update the Board on events that have taken place recently within the civilian radioactive waste management program and the Yucca Mountain project. Presentations will be on important issues related to the performance of a potential repository including the effects of waste heat on repository behavior, the significance of chlorine-36 isotopes found in exploratory tunnels, the characteristics and processes of the saturated zone that will affect radionuclide releases, and results from corrosion tests of waste package materials. An update on repository design also will be presented.

In the afternoon, the DOE will make a series of presentations on the latest version of its repository safety strategy. Included will be an analysis of the ''defense in depth'' envisioned for the repository system and identification of key research priorities that the project will address over the next 18 months.

The morning session on September 15 will focus on the DOE's work to revise its total system performance assessment (TSPA) and on its use of multiple lines of evidence to develop a strategy for demonstrating the safety of the proposed Yucca Mountain repository. Included among the presentations will be a discussion of the treatment of uncertainty in TSPA, especially the use of bounding analyses. The use of natural analogs, or naturally occurring phenomenon that could increase understanding of conditions at Yucca Mountain, also will be discussed. The afternoon session will be devoted to presentations on model validation by the DOE and a subsequent roundtable discussion on this issue.

The meeting will be open to the public on both days. Time for public comment will be set aside at approximately 11:30 a.m. on both days and at the end of the afternoon session (approximately 4:30 p.m.) on September 14. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. Depending on the number of requests, a time limit may be imposed on oral statements, but written comments of any length may be submitted for inclusion in the record of the meeting. Interested parties also may submit questions in writing to the Board. As time permits, written questions will be answered during the sessions.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning on October 18, 1999. For further information, contact Karyn Severson, Director of External Affairs, NWTRB, at 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. Its purpose is to evaluate the technical and scientific validity of activities undertaken by the DOE related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: August 10, 1999.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 99–21088 Filed 8–13–99; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 18f–1, Form N–18F–1, SEC File No. 270–187; OMB Control No. 3235–0211

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company (''fund'') that may redeem its securities in kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 106 funds file the Form annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 106 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–21189 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form F–6, SEC File No. 270–270, OMB Control No. 3235–0229

Regulation S–T, SEC File No. 270–375, OMB Control No. 3235–0424

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

(''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

The Commission exercised its authority under Section 19 of the Securities Act of 1933 to establish Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. Such information is available for public inspection. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. It has been estimated that there are 339 respondents annually resulting in an estimated annual total burden of 306 hours.

The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the United States. All information provided to the Commission is available for public review upon request.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who have to file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements.

The electronic filing requirement is mandatory for all companies required to file electronically. All information provided to the Commission is available to the public for review.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21190 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Release No. 23939; 812–11566]

BHF Finance (Delaware) Inc.; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the Act'') from all provision of the Act.

SUMMARY OF APPLICATION: Applicant, BHF Finance (Delaware) Inc. (''BHF Finance''), seeks an order to permit BHF Finance to sell securities and use the proceeds to finance the business activities of its parent company, BHF–BANK Aktiengesellschaft (''BHF''), and certain companies controlled by BHF.

FILING DATES: The application was filed on March 17, 1999, and amended on August 4, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1999, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 590 Madison Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. BHF is a commercial bank organized under the laws of the Federal Republic of Germany (''Germany''). BHF provides, directly or through its subsidiaries, a wide range of financial services to individuals businesses, governments and financial institutions throughout Germany and internationally. As of December 31, 1998, BHF was the seventh largest publicly traded commercial bank in Germany in terms of consolidated total assets, which totaled approximately DM 89 billion. BHF Finance is a Delaware corporation and wholly-owned subsidiary of BHF that was organized to engage in financing activities and to provide funds for BHF and companies controlled by BHF.

2. On December 30, 1998, approximately 39% of the shares of BHF were indirectly acquired by ING Groep N.V. (''ING Group''), a Netherlands corporation engaged in insurance activities in the United States. BHF Finance states that ING Group's investment is considered a controlling interest under the Bank Holding Company Act of 1956 (''BHCA''), which prohibits a foreign entity from engaging directly or indirectly in banking and insurance activities in the United States at the same time. Accordingly, BHF is in the process of terminating all banking activities, as defined in the BHCA, in the United States (''de-banking'').

3. BHF Finance previously issued and sold commercial paper in the United States pursuant to an SEC order issued in 1986 and amended in 1993 (''Prior Order'') exempting it from all provisions of the Act.[1] BHF Finance has discontinued the issuance and sale of commercial paper pursuant to the Prior Order in connection with the de-banking. All of the commercial paper issued pursuant to the Prior Order matured on or prior to June 18, 1999. The order requested by BHF Finance will supersede the Prior Order.

4. BHF intends to continue to engage in some business activities in the BHF Finance, primarily the business of extending commercial credit to third parties, through BHF (USA) Capital Corporation (''BHF Capital''), a Delaware corporation, which is an

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[1] *Berliner Handels-Und Frandfurter Bank and BHF Finance (Delaware) Inc.*, Investment Company Act Release Nos. 19603 (July 38, 1993) (notice) and 19649 (Aug. 24, 1993) (order); Berliner Handels-Und Frandfurter Bank and BHF Finance (Delaware) Inc., Investment Company Act Release Nos. 15188 (July 2, 1986) (notice) and 15230 (July 29, 1986) (order).

indirect, wholly-owned subsidiary of BHF. All of the outstanding securities of BHF Capital are indirectly owned by BHF.

5. BHF Finance proposes to issue commercial paper in the United States pursuant to the exemption contained in section 3(a)(3) of the Securities Act of 1933 (the ''1933 Act''). BHF Finance may also offer debt securities other than commercial paper or non-voting preferred stock in the United States, and lend the proceeds to or invest the proceeds in BHF, BHF Capital and other companies that, after giving effect to the exemption requested in the application, will be companies controlled by BHF within the meaning of rule 3a–5(b) under the Act as discussed below (''Controlled Companies''). Rule 3a–5 generally exempts finance subsidiaries of operating companies from the definition of investment company.

6. Any issuance of debt securities or non-voting preferred stock by BHF Finance will be guaranteed unconditionally by BHF with a guarantee that meets the requirements of rule 3a–5(a)(1) or (2), respectively (the ''Guarantee''). In accordance with rule 3a–5(a)(5), at least 85% of any cash or cash equivalents raised by BHF Finance will be invested in or loaned to BHF and Controlled Companies as soon as practicable, but in no event later than six months after BHF Finance's receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by BHF Finance, including temporary investments, will be made in government securities, securities of BHF and Controlled Companies, or debt securities that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

7. In connection with BHF Finance's offering of securities guaranteed by BHF, BHF will submit to the jurisdiction of any state or Federal court in the County of New York, State of New York and will appoint an agent to accept any process which may be served in any action based upon BHF's obligations to BHF Finance as described in the application. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to securities issued by BHF Finance as described in the application have been paid.

Applicant's Legal Analysis

1. BHF Finance requests relief under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of BHF's subsidiaries do not fit within the definition of ''companies controlled by the parent company'' because they derive their non-investment company status from section 3(c) of the Act. In addition, BHF engages in certain activities (including certain investment activities) through BHF Capital. BHF Capital has no outstanding securities other than those owned directly or indirectly by BHF (excluding short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration). BHF Capital would be eligible for exemption under rule 3a–3 under the Act, except that BHF is a foreign bank.[2] Accordingly, BHF Finance requests exemptive relief to permit it to lend the proceeds of its debt offerings to certain subsidiaries of BHF that are excluded from the definition of investment company by virtue of section 3(c) and subsidiaries that would be excluded by virtue of rule 3a–3, but for BHF's status as their parent company. BHF Finance states that neither itself, nor BHF, nor BHF Capital engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. BHF Finance submits that its exemptive request meets the standards set out in section 6(c).

[2] Rule 3a–3 generally exempts an issuer from the definition of investment company if all of its outstanding securities (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are owned by an eligible parent company. A parent company generally is eligible if it meets certain asset and income tests and (i) it is not an investment company as defined in section 3(a) of the Act; (ii) it is excluded from the definition of investment company by section 3(b) of the Act; or (iii) it is deemed not to be an investment company under rule 3a–1 of the Act.

Applicant's Condition

BHF Finance agrees that the order granting the requested relief will be subject to the following condition:

BHF Finance will comply with all of the provisions of rule 3a–5 under the Act, except paragraph 9b)(3)(i) to the extent that BHF Finance will be permitted to invest in or make loans to entities that do not meet the portion of the definition of ''company controlled by the parent company'' solely because they are:

(1) subsidiaries of BHF that would be excluded from the definition of investment company by virtue of rule 3a–3 under the Act, but for BHF's status as their parent company; or

(2) corporations, partnerships, and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (4), (6) or (7) of the Act, provided that any such entity:

(a) if excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act; and

(b) if excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21192 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23940; 812–11382]

The Chapman Funds, Inc., et al.; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act and certain disclosure requirements.

SUMMARY OF APPLICATION: The requested order would permit applicants, The Chapman Funds, Inc. (''Company'') and Chapman Capital Management (''CCM''), to hire subadvisers and materially amend subadvisory agreements without shareholder approval, and grant relief from certain disclosure requirements.

FILING DATES: The application was filed on October 29, 1998, and was amended on April 14, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 7, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, World Trade Center-Baltimore, 28th Floor, 401 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company is organized as a Maryland corporation and registered under the Act as an open-end management investment company which offers shares in seven series (collectively, the ''Funds''), each of which has its own investment objectives, policies, and restrictions.[1] CCM is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a subsidiary of Chapman Capital Management Holdings, Inc. CCM serves as the investment adviser to each Fund pursuant to advisory agreements between CCM and the Company (''Advisory Agreements'').

2. For certain Funds (''Multi-Manager Funds''), CCM will seek to enhance performance and reduce market risk by allocating Fund assets among one or more subadvisers (''Subadvisers'').[2] Each Subadviser is registered as an investment adviser under the Advisers Act. For the Multi-Manager Funds, CCM will monitor the performance of both the total Fund portfolio and the portion of the total Fund portfolio allocated to each Subadviser and will reallocate Fund assets among Subadvisers, or recommend to the Company's board of directors (''Board'') that the Fund employ or terminate particular Subadvisers. Under agreements between CCM and the Subadvisers (''Sub-Advisory Agreements''), the specific investment decisions for each Multi-Manager Fund will be made by Subadvisers subject to the general supervision of CCM and the Board. The Funds pay investment advisory fees to CCM, and CCM will pay Subadvisers out of its fees.

3. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 under the Act to permit Subadvisers approved by the Board to serve as Subadvisers for the Multi-Manager Funds, without the necessity of obtaining shareholder approval. Shareholder approval would continue to be required for any Subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Company or CCM, other than by reason of serving as a Subadviser to one or more of the Multi-Manager Funds (an ''Affiliated Subadviser'').

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Multi-Manager Funds to disclose the fees paid by CCM to the Subadvisers. For each Fund, the Company will disclose the following (both as a dollar amount and as a percentage of the Fund's net assets): (1) Aggregate fees paid to CCM and any Affiliated Subadvisers; and (2) aggregate fees paid to Subadvisers other than Affiliated Subadvisers (''Limited Fee Disclosure''). For any fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to such Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series of class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N1–A is the registration statement used by open-end investment companies. Items 3, 6(a)(1)(ii), and 15(a)(3) of Form N–1A (and items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A prior to the amendments effective June 1, 1998) require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration statement form for business combinations involving open-end management investment companies. Item 3 of Form N–14 requires a fee table that shows current fees for the registrant and the company being acquired, and pro forma fees, if different, for the registrant after giving effect to the transaction.

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee will be increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and

[1] Applicants request that the relief also apply to all subsequently registered open-end management investment companies that in the future are advised by CCM or any entity controlling, controlled by, or under common control with CCM and that use the multi-manager structure described in this application (''Future Companies''), and to any series of the Company or Future Companies that may be created in the future. Applicants state that all registered open-end management investment companies that currently intend to rely on the requested order are named as applicants, and any Future Company that relies on the order will comply with the terms and conditions contained in the application.

[2] On behalf of DEM Multi-Manager Equity Fund and DEM Multi-Manager Bond Fund, CCM currently intends to enter into Sub-Advisory Agreements with twelve Subadvisers and four Subadvisers, respectively.

proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including subadvisers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that investors in a Multi-Manager Fund rely on CCM to select appropriate Subadvisers. Applicants contend that the role of the Subadvisers, from the perspective of the investor, will be comparable to that of the individual portfolio managers employed by other investment advisory firms. Applicants note that the Advisory Agreements will continue to be subject to section 15 of the Act and rule 18f–2 under the Act.

9. Applicants assert that the information provided in the Limited Fee Disclosure will permit each investor to determine whether the fees for investment advisory services are competitive. In addition, applicants contend that some Subadvisers use a ''posted'' rate schedule to set their fees and may be unwilling to serve as Subadvisers at any rate other than their ''posted'' fee rates, unless the rates negotiated for the Funds are not publicly disclosed. Applicants state that requiring disclosure of Subadvisory fees would deprive CCM of its bargaining power to negotiate lower rates.

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Fund, or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, such Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that CCM has ultimate responsibility to oversee Subadvisers and to recommend their hiring, termination and replacement.

3. CCM will provide general management and administration services to any Fund relying on the requested order, including overall supervisory responsibility for the general management and investment of such Fund, and subject to the review and approval of the Board will (1) set the overall investment strategies of the Fund; (2) evaluate, select and recommend Subadvisers; (3) allocate, and when appropriate, reallocate, the assets of the Fund among Subadvisers; (4) monitor and evaluate the investment performance of the Subadvisers; and (5) implement procedures reasonably designed to ensure that the Subadvisers comply with the investment objectives, policies, and restrictions of the Fund.

4. At all times, a majority of the Board will be persons who are not ''interested persons'' of the Company as defined in section 2(a)(19) of the Act (''Independent Directors''), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

5. CCM will not enter into a Sub-Advisory Agreement with an Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

6. When a change of a Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that any such change of Subadviser is in the best interest of the Fund and its shareholders, and does not involve a conflict of interest from which CCM or the Affiliated Subadviser derives an inappropriate advantage.

7. No director or officer of the Company or director or officer of CCM will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Subadviser except for ownership of interests in CCM or any entity that controls, is controlled by, or is under common control with CCM, or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

8. Within ninety days of the hiring of any Subadviser, the affected Fund will furnish its shareholders with all information about the new Subadviser that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. The Fund will meet this condition by providing shareholders, within ninety days of the hiring of a Subadviser, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

9. The Company will disclose in its registration statement the Limited Fee Disclosure.

10. CCM will provide the Board, no less frequently than quarterly, information about CCM's profitability for each Fund that relies on the requested relief. Such information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

11. Whenever a Subadviser is hired or terminated, CCM will provide the Board information showing the expected impact on CCM's profitability.

12. At all times, independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors. The selection of such counsel will remain within the discretion of the Independent Directors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21191 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23938; File No. 812–11594]

Dow Target Variable Fund LLC; Notice of Application

August 10, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant seeks an order under Section 6(c) of the Act amending an existing order (Investment Company Act Release No. 23628, Dec. 20, 1998). The amended order would exempt Applicant and any other existing or future open-end management investment company or portfolio thereof that is advised by its investment adviser, Ohio National Investments, Inc. (the ''Adviser''), or any entity controlled by or under common control with the Adviser that follows an investment strategy that is the same as one of the two investment strategies described in the application (''Future Funds'') from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit their portfolios: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Dow Target Variable Fund LLC.

FILING DATE: The application was filed on March 18, 1999, and amended on July 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 31, 1999, and must be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, Dow Target Variable Fund LLC, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 [tel. (202) 942–8090].

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811–09019). It currently consists of twelve non-diversified portfolios, each named after a calendar month (January Portfolio, February Portfolio, etc.) (collectively, the ''Dow Target 10 Portfolios''). Applicant proposes to add another twelve non-diversified portfolios, also named after the calendar months (collectively, the ''Dow Target 5 Portfolios'').

2. Applicant was organized under the laws of Ohio as a limited liability company on September 21, 1998. Under Ohio law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant (''Interest'') represents an undivided interest in the stocks held in one of Applicant's portfolios.

3. The Interests are not offered directly to the public. The only direct owner of the Ohio National Life Insurance Company (''Ohio National Life'') through its variable annuity separate accounts. Those of Ohio National Life's variable annuity owners who have contract values allocated to any of Applicant's portfolios have indirect beneficial rights in the Interests and have the right to instruct Ohio National with regard to how it votes the Interests that it holds in its variable annuity separate accounts.

4. Applicant's investment adviser is Ohio National Investment, Inc. (the ''Adviser''), a wholly owned subsidiary of Ohio National Life. First Trust Advisors L.P. (''First Trust'') is the sub-adviser to each of Applicant's portfolios.

5. Each of Applicant's Dow Target 10 Portfolios invests approximately 10% of its total assets in the common stock of the ten companies in the Dow Jones Industrial Average (the ''Dow'') having the highest dividend yield as of the close of business on the next to last business day of the month preceding the month for which the portfolio is named (the ''Stock Selection Date''). These ten companies are popularly known as the ''Dogs of the Dow.'' On or about the first business day of the month for which a portfolio is named, First Trust sets the proportionate relationship among the ten stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of Dogs of the Dow stocks.

6. Each of Applicant's Dow Target 5 Portfolios will invest approximately 20% of its total assets in the common stock of the five companies of the Dogs of the Dow having the lowest per share stock price as of the close of business on the Stock Selection Date. On or about the first business day of the month for which a portfolio is named, First Trust will set the proportionate relationship among the five stocks to be held in that portfolio for the next twelve months. At the end of a portfolio's twelfth month, the portfolio will be rebalanced with a new mix of five Dogs of the Dow stocks.

7. Stocks held in any portfolio are not expected to reflect the entire index, and the prices of Interests are not intended to parallel or correlate with movements in the Dow. Generally, it will not be possible for all of a portfolio's funds to be invested in the prescribed mix of applicable stocks at any given time. However, the Adviser and First Trust will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the stocks.

8. The Dow consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the broader domestic stock market and of American industry. Dow Jones and Company, Inc. is not affiliated with the Applicant and has not participated, and will not participate, in any way in the creation of the portfolios or the selection of the stocks purchased by the portfolios.

9. Until the end of the initial month of a portfolio, Interests may be purchased by variable annuity separate accounts of Ohio National Life. After the initial month of a portfolio, no further Interests in that portfolio may be purchased until eleven months later. Interests may be redeemed at any time.

10. Any purchase of Interests made after the initial business day of the month for which the portfolio is named will duplicate, as nearly as is practicable, the original proportionate relationships of the applicable stocks

held by that portfolio. Because the prices of each of the stocks will change nearly every day, the ratio of the price of each to the total price of the entire group of applicable stocks will also change daily. However, the proportion of stocks held by that portfolio will not change materially as a result of the sales of additional Interests after the first business day of the month for which the portfolio is named.

11. Applicant is not a ''regulated investment company'' under Subchapter M of the Internal Revenue Code of 1986, as amended (the ''Code''). Nonetheless, it does not pay federal income tax on its interest, dividend income or capital gains. As a limited liability company whose interests are sold only to Ohio National Life, it is disregarded as an entity for purposes of federal income taxation. Ohio National Life, through its variable annuity separate accounts, is treated as owning the assets of the portfolios directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Under current tax law, interest, dividend income and capital gains of Applicant are not taxable to Applicant, and are not currently taxable to Ohio National Life or to contract owners, when left to accumulate within a variable annuity contract.

12. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must be ''adequately diversified in accordance with Treasury regulations.

13. Each portfolio must comply with the Section 817(h) diversification requirements. Therefore, the Adviser and First Trust may depart from the portfolio investment strategy, if necessary, in order to satisfy the Section 817(h) diversification requirements. Under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or First Trust. Neither the Adviser nor First Trust has any discretion as to which common stocks are purchased. Securities purchased for each portfolio may include securities of issuers in the Dow that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

14. The existing order permits Applicant's Dow Target 10 Portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities. Applicant now proposes to extend the relief to permit Applicant's portfolios and Future Funds: (a) to invest up to 10.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities; or (b) to invest up to 20.5% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter of the affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Each of Applicant's portfolios undertakes to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. A potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant states that this concern does not arise in this situation. Applicant states that generally, none of Applicant, the Adviser or First Trust has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the Dow, which is unaffiliated with Applicant, the Adviser or First Trust. In addition, the stock must also qualify as one of the ten companies in the Dow that has the highest dividend yield as of the close of business on the Stock Selection Date. In the case of Dow Target 5 Portfolios, the stock must then qualify as one of the five companies of the Dogs of the Dow that have the lowest per share stock price as of the close of business on the Stock Selection Date.

5. The Adviser and First Trust are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular portfolio would fail to be ''adequately diversified'' under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as annuity contracts under the Code. Applicant states that the likelihood of this exception arising is extremely remote. In such a situation, Applicant submits that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

6. Applicant states that the liquidity of a portfolio is not a concern here since each common stock selected is a component of the Dow, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

7. In addition, Applicant submits that the effect of a portfolio's purchase of the stock of parents of broker-dealers would be *de minimis.* Applicant states that the common stocks of securities related issuers represented in the Dow are widely held with active markets and

that potential purchases by a portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

8. Another possible conflict of interest is where a broker-dealer may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant states that because of the large market capitalization of the Dow issuers and the small portion of these issuers' common stock and trading volume that are purchased by a portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a portfolio is invested in the broker-dealer or a parent thereof.

9. Finally, another potential conflict of interest could occur if any investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any portfolio, nor any affiliate of such a company, will act as broker or dealer for any portfolio in the purchase or sale of any security.

10. Applicant seeks relief not only with respect to the Dow Target 10 Portfolios and the Dow Target 5 Portfolios, but also with respect to Future Funds. Applicant states that without the requested class relief, exemptive relief for any Future Fund would have to be requested and obtained separately. Applicant asserts that these additional requests for exemptive relief would present no issues under the Act not already addressed in the application. Further, if Future Funds were to repeatedly seek exemptive relief with respect to the same issues, investors would receive no additional protection or benefit, and investors could be disadvantaged by increased costs from preparing the additional requests for relief. Applicant argues that class relief is appropriate in the public interest because the relief will promote competitiveness in the variable insurance products market by eliminating the need for Future Funds to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Also, eliminating the delay and the expenses of repeatedly seeking exemptive relief would enhance the ability of Future Funds to effectively take advantage of business opportunities as such opportunities arise.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the Dow as of the Stock Selection Date;
2. With respect to Dow Target 10 Portfolios, the common stock represents one of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;
3. With respect to Dow Target 5 Portfolios, the common stock represents one of the five companies with the lowest dollar per share stock price out of the ten companies in the Dow that have the highest dividend yield as of the close of business on the Stock Selection Date;
4. With respect to Dow Target 10 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any portfolio's total assets, but in no event more than 10.5% of the value of the portfolio's total assets;
5. With respect to Dow Target 5 Portfolios, as of close of business on the Stock Selection Date, the value of the common stock of each securities related issuer represents approximately 20% of the value of any portfolio's total assets, but in no event more than 20.5% of the value of the portfolio's total assets; and
6. No company whose stock is held in any portfolio, nor any affiliate thereof, will act as broker or dealer for any portfolio in the purchase or sale of any security for that portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21091 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23936, 812–11738]

The First Commonwealth Fund, Inc.; Notice of Application

August 9, 1999.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: The First Commonwealth Fund, Inc., requests an order to permit it to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution plan with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value.

FILING DATES: The application was filed on August 5, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Nadya Roytblat, Assistant Director at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The applicant is organized as a Maryland corporation and registered under the Act as a closed-end, non-

diversified management investment company. The applicant's primary investment objective is to provide high current income, primarily through investment in fixed-income securities of issuers in, or denominated in the currency of Australia, Canada, New Zealand, and the United Kingdom. The applicant's common shares are listed on the New York Stock Exchange and have consistently traded at a discount to net asset value. EquitiLink International Management Limited is the investment manager to the applicant and is registered as an investment adviser under the Investment Advisers Act of 1940.

2. On June 10, 1999, the applicant's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, adopted a distribution plan (''Monthly Distribution Plan'') that calls for regular monthly distributions at a monthly cash distribution rate (''Monthly Cash Distribution Rate'') set once a year by the Board. Among other things, the Board considered empirical evidence that, in some cases, market discounts to net asset value have narrowed upon adoption of similar distribution policies by other closed-end funds. The Board has set the annualized Monthly Cash Distribution Rate for the period March 1999, through February 2000, at 7.75 cents per share. If, for any taxable year, the total distributions required by its Monthly Distribution Plan exceed the applicant's annual net investment income and net realized capital gains, the excess will generally be treated as a return of capital (up to the amount of the stockholders's adjusted tax basis in his share).

3. The applicant requests relief to permit it, so long as it maintains in effect the Monthly Distribution Plan, to make up to twelve distributions of long-term capital gains in any one taxable year.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in Section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to Section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under Section 4982 of the Code.

2. The applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions the applicant may make with respect to any one year, would prohibit the applicant from including available net long-term capital gains in certain of its fixed monthly distributions. As a result, the applicant states that it could be required to fund these monthly distributions with returns of capital (to the extent net investment income and net realized short-term capital gains are insufficient to cover a monthly distribution). The applicant further asserts that, in order to distribute all of its long-term capital gains within the limits in rule 19b–1, the applicant may be required to make total distributions in excess of the annual amount called for by the Monthly Distribution Plan or retain and pay taxes on the excess amount. The applicant asserts that the application of rule 19b–1 to the applicant's Monthly Distribution Plan may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. The applicant submits that the concerns underlying section 19(b) and rule 19b–1 are not present in the applicant's situation. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. The applicant states that its Monthly Distribution Plan has been described in the applicant's periodic communications to its shareholders. The applicant states that, in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution will accompany each distribution (or the confirmation of the reinvestment thereof under the applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each monthly distribution during the year will be included with the applicant's IRS Form 1099–DIV report sent to each shareholder who received distributions during the year (including shareholders who have sold shares during the year).

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could improperly influence distribution practices including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend (''selling the dividend''), when the dividend results in an immediate corresponding reduction in net asset value and is, in effect, a return of the investor's capital. The applicant submits that this concern does not arise with regard to closed-end management investment companies, such as the applicant, that do not continuously distribute their shares. The applicant also states that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the applicant.

5. The applicant further states that any offering of transferable rights will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

6. The applicant states that increased administrative costs are a concern underlying section 19(b) and rule 19b+1. The applicant asserts that this concern is not present because the applicant will continue to make monthly distributions regardless of whether long-term capital gains are included in any particular distribution.

7. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the applicant believes that the requested relief satisfies this standard.

Applicant's Condition

The applicant agrees that the order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the applicant of its common shares other than:

(i) a rights offering with respect to holders of the applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) the applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the applicant; unless the applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

[FR Doc. 99–21089 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Released No. 23937; 812–11590]

WNC Housing Tax Credit Fund VI, L.P., Series 7 and 8, and WNC & Associates, Inc.; Notice of Application

August 9, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

APPLICANTS: WNC Housing Tax Credit Fund VI, L.P., Series 7 and WNC Housing Tax Credit Fund VI, L.P., Series 8 (each a ''Series,'' and collectively, the ''Fund''), and WNC & Associates, Inc. (the ''General Partner'').

SUMMARY OF APPLICATION: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATES: The application was filed on April 22, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 2, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549–0609. Applicants, 3158 Redhill Avenue, Suite 120, Costa Mesa, California 92626–3416.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. no. 202–942–8090).

Applicants' Representations

1. Each Series was formed in 1997 as a California limited partnership. Each Series will operate as a ''two-tier'' partnership, i.e., each Series will invest as a limited partner in other limited partnerships (''Local Limited Partnerships''). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On April 16, 1999, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest (''Units'') at $1,000 per unit. The minimum investment will be five units for most investors, although employees of the General Partner and its affiliates and/or investors in syndications previously sponsored by the General Partner may purchase a minimum of two Units. Purchasers of the Units will become limited partners (''Limited Partners'') of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) as a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex normally will be paid to the Series until it has received a full return of the capital invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). A Series also will receive a share of any remaining sale or refinancing proceeds, which may range from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partnership on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the ''Partnership Agreement''). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a dealer-manager fee and a nonaccountable expense reimbursement in amounts equal to 2% and 4%, respectively, of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, and the nonaccountable expense reimbursement).

10. During the acquisition phase, the Fund will pay the General Partner or its affiliates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. The General Partner and its affiliates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which the General Partner will pay all acquisition expenses of the Fund. Aggregate fees and expenses paid in connection with the organization of the Fund, the offering of Units, and the acquisition of Local Limited Partnerships interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and the Fund may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of the Fund and ongoing management of the Fund. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of the Fund for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, the Fund will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with the Southern California Bank (''Escrow Agent''). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to the Series and held by it pending investment in local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, (a) any entity that was formed to invest primarily in apartment complexes eligible only for Federal low income housing credits will be given priority with respect to any investment that is not eligible for state low income housing credits, and (b) any entity that was formed to invest primarily in apartment complexes eligible for state low income housing credits as well as for Federal credits will be given priority with respect to any investment that is eligible for the state credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be ''investment companies'' under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an ''investment company'' if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an ''investment company'' if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire ''investment securities'' having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed ''investment securities,'' they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purpose and criteria set forth in the SEC's release concerning two-tier real estate partnerships (the ''Release'').[1] The Release states that investment

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to quality for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interests.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21090 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41719; File No. SR–NSCC–99–10]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Arrangements to integrate the National Securities Clearing Corporation and The Depository Trust Company

August 9, 1999

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on august 5, 1999, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–99–10) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change filed by NSCC involves proposed arrangements to integrate NSCC and The Depository Trust Company (''DTC''). The proposal provides for the following:

- DTC and NSCC will form a New York corporation (''Holding Company'') for the purpose of owning directly all of the outstanding stock of NSCC and owning indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.
- After receipt of all necessary regulatory approvals, the Holding Company will conduct exchange offers in which current DTC stockholders will have the opportunity to exchange their DTC shares for newly-issued Holding Company common stock on a one-for-one basis and the two current stockholders of NSCC will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares (''Exchange Offers'').
- The Holding Company will elect as the Directors of DTC and NSCC the persons elected by the stockholders of the Holding Company.
- As subsidiaries of the Holding Company, DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.
- The Holding Company itself will not engage in clearing agency activities. Certain support functions, including Human Resources, Finance, Audit, General Administration, Corporate Communications, and Legal will be centralized in the Holding Company, and the Holding Company will provide those services to each of the two subsidiary clearing agencies pursuant to service contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At their meetings in February 1999, the Boards of Directors of DTC and NSCC voted to proceed with a plan for the integration of the two clearing agencies. A principal goal of the plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at DTC and NSCC for the clearance and settlement of both institutional and broker transactions. This strategy is intended to accommodate shortened settlement cycles and increased volumes, to improve risk management, and to lower transaction processing costs.

An initial step in the plan was the identification from among the incumbent directors of both Boards of a single group of individuals to serve as the Board of Directors for each of the two companies. Since simply adding the membership of NSCC's Board to DTC's Board would have resulted in certain user and marketplace organizations having more than one representative, each of these organizations was asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management Directors, a group of twenty-seven persons was identified. That group has been elected as NSCC Board of Directors by NSCC's

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

stockholders. Since federal banking law applicable to DTC limits the maximum size of DTC's Board to twenty-five members, two of the persons elected to NSCC's Board will participate in DTC Board meetings as non-voting advisors. The remaining twenty-five persons have been elected as DTC Board of Directors by DTC stockholders.[3]

The next steps in the integration plan, conducting the Exchange Offers and implementing certain stock ownership and corporate governance arrangements for the Holding Company, are the subjects of the proposed rule change.

The Holding Company will issue two classes of stock in connection with the Exchange Offers: common stock to be owned initially by current DTC stockholders and preferred stock to be owned in equal amounts by the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers, Inc. (''NASD''), the current stockholders of NSCC. As explained in more detail below, NSCC believes that DTC and NSCC will satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act[4] in the Holding Company structure by (1) giving participants and members of DTC and NSCC the right to purchase shares of Holding Company common stock on a basis that reflects their use of the services and facilities of DTC and NSCC (based on a system analogous to the system now employed by DTC for reallocating entitlements to purchase shares of DTC stock) and (2) selecting individuals to be directors of the holding Company (who will also be directors of DTC and NSCC) on a basis that will insure that all major constituencies in the securities industry will have a voice in the business and affairs of DTC and NSCC (based on a process analogous to the process now employed by the two clearing agencies for selecting their directors).

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement will be amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.[5]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement (''Basic Documents'')[6] contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A of the Act. In this regard, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company, and that person will also serve on the Boards of DTC and NSCC. All other Directors will be elected annually by the owners of Holding Company common stock.
- As discussed above, the rights to purchase Holding Company common stock will be reallocated to the users of both clearing agencies based upon the users' usage. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

With respect to the nomination process, each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Since the Basic Documents provide for cumulative voting, one or more owners of Holding Company common stock could arrange to elect a person not on the slate nominated for election by the Board.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it is designed to coordinate further the activities of DTC and NSCC in order to help assure the continued prompt and accurate clearance and settlement of securities transactions in the face of changing business and regulatory requirements for the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. DTC and NSCC are utilities created to serve members of the securities industry by providing certain complementary services that are ancillary to the businesses in which industry members compete with one another.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from NSCC members have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[3] *See* Securities Exchange Act Release No. 41520 (June 11, 1999), 64 FR 33336 [File No. SR–NSCC–99–08] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1(b)(3)(C).

[5] NSCC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[6] NSCC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through NSCC.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. all submissions should refer to File No. SR–NSCC–99–10 and should be submitted by September 7, 1999.

For the commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–21193 Filed 8–13–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 3107]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2776).

EFFECTIVE DATE: As shown on each of the ten (10) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated July 29, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense services to Finland for the final assembly and ramp flight of the F/A–18 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 3–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the design and development of the Hyper Shower Commercial Communication Satellite system in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 78–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two S–70A helicopters for use by the Turkish Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 80–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the export of one Telestar commercial communications satellite to French Guiana for launch into outer space.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 74–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves a technical assistance agreement for the design, manufacture, and launch of two direct broadcasting satellites for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 23–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of amorphous silicon solar arrays for a commercial satellite program (SkyBridge) in France.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 32–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of amorphous silicon solar arrays for a commercial satellite program (Teledesic) in France and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 35–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36 (c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the design and production F/A–18E/F Nose Landing Gear, in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 44–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of hardware kits and components to manufacture and assemble an additional 117,000 M16A2 rifles, M4 carbines and 7,000 M203 grenade launchers for end use by the Greek Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 81–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Singapore in support of the manufacture of F404, F414 and T700 aircraft engine components and equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 82–99

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 99–21188 Filed 8–13–99; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, (FR 64, page 24447).

DATES: Comments must be submitted on or before September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Security Programs for Indirect Air Carriers, 14 CFR Part 109.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0505.

Forms(s): None.

Affected Public: Indirect Air Carriers.

Abstract: Security programs required by 14 CFR Part 109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorists activities in the forwarding of package cargo by passenger aircraft.

Estimated Annual Burden Hours: 664 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 11, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–21181 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received,and corrections. The purpose of this notice is to improve the pubic's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 22, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule docket (AGC–200), Petition docket No. ________, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 11, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29285.

Petitioner: United Parcel Service.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought/ Disposition: To permit UPS to complete the required digital flight data recorder installations on an alternate schedule rather than at the next heavy maintenance check after August 20, 1999.

Dispositions of Petitions

Docket No.: 27429.

Petitioner: Community College of the Air Force.

Section of the FAR Affected: 14 CFR 146.31(c)(2)(iii).

Description of Relief Sought/ Disposition: To permit the CCAF to allow U.S. Air Force aviation maintenance technicians who have completed military aviation maintenance training courses to be evaluated using the criteria that is used for the civilian sector. *Grant, 06/04/99, Exemption No. 6094B.*

Docket No.: 28826.

Petitioner: GE Caledonian Limited.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Caledonian to provide individuals in certain departments with a copy of the repair station inspection procedures manual in lieu of providing a copy of the manual to all supervisory and inspection personnel. This exemption is further amended by changing the references to Greenwich Caledonian Limited to GE Caledonian Limited. *Grant, 04/15/99, Exemption No. 6617A.*

Docket No.: 28878.

Petitioner: A Skydive Las Vegas, Inc.

Section of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To allow ASLV to permit nonstudent parachutists who are foreign nationals to make intentional parachute jumps for the purpose of training and recreational activities at ASLV's facilities without complying with the parachute equipment and packing requirements of § 105.43(a). *Grant, 06/ 04/99, Exemption No. 6443A.*

[FR Doc. 99–21118 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, North Canton, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frederick J. Krum, Director of Aviation of the Akron-Canton Regional Airport Authority Board at the following address: Akron-Canton Regional Airport Authority Board, 5400 Lauby Road, Box #9 North Canton, Ohio 44720–1598.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie R. Swann, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7277). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 16, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part; no later than November 5, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–CAK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2002.

Proposed charge expiration date: July 1, 2005.

Total estimated PFC revenue: $3,175,200.00.

Brief description of proposed projects:

Impose Only: Ground Run-up Enclosure; Relocate Mt. Pleasant & Frank Roads; Runway 1 Extension and Runway 19 Threshold Relocation.

Impose and Use: SRE Spreader Trucks; Ground Run-up Noise Study; Storm Water Drainage Improvements; Passenger Loading Bridge; Storm Water Pollution Prevention Plan; Environmental Assessment (EA) RWY 1 Extension Phase II; Benefit Cost Analysis for Runway 1 Extension; Part 107 Security Access Control System Upgrade; Terminal Master Plan; Airport Entrance Road Signage Design; Land Acquisition-Kuhar and Daily; Airport Layout Plan Update; Airport Entrance Road Signage and Storm Water Drainage Control.

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operations.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Akron-Canton Regional Airport Authority Board.

Issued in Des Plaines, Illinois, on August 6, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–21182 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Detroit City Airport, Detroit, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Detroit City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael G. Trout, Director, Detroit City Airport, Michigan at the following address: City of Detroit, 1110 City-County Building, Detroit, MI 48226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Detroit under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gary J. Migut, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734) 487–7278. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on this application to: impose and use the revenue from a PFC at Detroit City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 2, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Detroit was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 1999.

PFC Application No.: 99–01–C–00–DET.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: February 28, 2004.

Total estimated PFC revenue: $3,650,000.00.

Brief description of proposed projects:

Impose and Use: Jetways, Snow Removal Equipment, Terminal Expansion Study.

Impose Only: Terminal Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxis/ Commercial Operators (ATCOs).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the City of Detroit.

Issued in Des Plaines, Illinois, on August 6, 1999.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–21183 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5056; Notice 2]

Grant of Application for Determination of Inconsequential Noncompliance with Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM), determined that GM S10 Electric Trucks (S10 trucks equipped with an electric propulsion system) fail to meet the turn signal bulb outage requirements found in S5.5.6 of Federal Motor Vehicle Safety Standard (FMVSS) 108—Lamps, Reflective Devices and Associated Equipment. Pursuant to Title 49 of the United States Code, Sections 30118 and 30120, GM applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential as it relates to motor vehicle safety. In accordance with 49 CFR 556.4(b)(6), GM also submitted a 49 CFR 573 noncompliance notification to the agency .

A notice of receipt of an application was published in the **Federal Register** (64 FR 27034) on May 18, 1999. Opportunity was afforded for comments until June 17, 1999. No comments were received.

FMVSS 108 S5.5.6 requires:

> S5.5.6 Each vehicle equipped with a turn signal operating unit shall also have an illuminated pilot indicator. Failure of one or more turn signal lamps to operate shall be indicated in accordance with SAE Standard J588e, Turn Signal Lamps, September 1970, except when a variable-load turn signal flasher is used on a truck, bus, or multipurpose passenger vehicle 80 or more inches in overall width, on a truck that is capable of accommodating a slide-in camper, or on any vehicle equipped to tow trailers.

The design of the S10 Electric Truck is based on the design of conventional S10 trucks powered by internal combustion engines, with modifications to accommodate the electric propulsion system. The conventional S10 trucks are capable of towing, have a variable load flasher, and, therefore, are not required by the Standard to provide bulb outage indication. The use of an S10 Electric Truck for towing is not practical and is not recommended. The impact of that fact was overlooked in the process of carrying over the design of the turn signal system from the conventional S10 to the S10 Electric and, therefore, the non complying vehicles were not equipped to indicate bulb outage and do not meet that requirement of FMVSS 108 S5.5.6. This was corrected in the 1998 model year production of the S10 Electric.

GM believed that this noncompliance is inconsequential to motor vehicle safety for these reasons:

The S10 Electric Trucks are identical in appearance to the normal production vehicles. Except for the lack of towing capability, the subject vehicles are functionally the same as fully compliant S10 trucks.

There were only 209 vehicles produced and, therefore, the exposure is extremely small.

Most of the subject vehicles are part of commercial and government fleets (they have been purchased by electric utility companies and state and municipal government agencies). As such, they will be exposed to routine maintenance schedules that are more rigorous than the average consumer practices.

Most trucks currently produced are capable of trailer towing and, thus, are not required to detect bulb outage. As a result, individuals and fleets who are accustomed to truck operation do not necessarily have an expectation that turn signal bulb outage will be indicated. In addition, other lamps required by FMVSS 108 are not required to provide bulb outage indication. As a result, the lack of that feature on these vehicles is not likely to be noticed by the vehicle operators, and they will continue to discover turn signal bulb outage the way they would on other trucks that are capable of towing.

GM is not aware of field complaints due to the subject condition.

GM asserted that the noncomplying trucks present the same level of safety as the millions of other vehicles with variable load flashers currently on the roads and highways. GM thus argued that this noncompliance is inconsequential as it relates to motor vehicle safety. In consideration of the foregoing, GM petitioned that it be exempted from the notification and remedy provisions of the Safety Act for this specific noncompliance with FMVSS No. 108.

The agency recognizes that these electric vehicles are mainly used in fleet service and in such use do receive regular periodic maintenance where detection of the failure of a turn signal lamp and replacement thereof is more likely than in individual ownership of such a vehicle. Thus, the agency is convinced that this noncompliance is inconsequential to motor vehicle safety. The likelihood of these S10 Electric Trucks having any sustained period of outage, relative to a normal S10, or even to vehicles with turn signal failure indication is expected to be a relatively infrequent event.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempt from providing the notification of noncompliance required by 49 U.S.C. 30118, required by 49 CFR 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21184 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6009]

W.F. Mickey Body Company, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

W.F. Mickey Body Company, Inc. (Mickey Body), a manufacturer of trailers (beverage bodies, van bodies, and vending bodies), is a corporation organized under the laws of the State of North Carolina with its principal place of business located in High Point, North Carolina. Mickey Body has determined that its tire and rim label information, on some units, is not in full compliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Mickey Body has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle shall show the information specified on the tire information label in both English and metric units. The standard also shows an example of the prescribed format.

From March 1996 to March 1999, Mickey Body manufactured approximately 2,464 beverage trailers, 4,222 beverage bodies, 5,822 van bodies, and 472 vending bodies that do not meet the requirements stated in the standard. The certification label affixed to these Mickey Body's units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and Mickey Body did not separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120. The use of metric measurements is required by FMVSS No. 120, pursuant to *Federal Motor Vehicle Safety Standards: Metric Conversion,* 50 FR 13639, published on March 14, 1995, and effective on March 14, 1996.

Mickey Body supports its application for inconsequential noncompliance with the following statements:

1. NHTSA has previously granted an exemption for inconsequential noncompliance [to Dorsey Trailers, Inc.] under circumstances virtually identical to [Mickey Body's] present case.

2. The omission of the metric data from Mickey Body's certification label is highly unlikely to have any effect whatsoever on motor vehicle safety.

3. Mickey Body currently includes a certification label that expresses the GVWR, GAWR and tire pressure in both English and metric units.

4. Mickey Body is not aware of any accident that was allegedly caused by the omission of metric measurements from a certification label.

5. Mickey Body did not receive reasonable notice of what is required by [paragraph S5.3 of FMVSS No. 120] and, therefore, the imposition of notification and remedy requirements are a violation of Mickey Body's due process rights under the Fifth Amendment of the [United States] Constitution.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 15, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21185 Filed 8–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 206X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Madison County, IL

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 7.5-mile line of railroad between milepost A–13.0 at Bluffs Junction to milepost A–20.5 at Troy Junction, in Edwardsville, Madison County, IL. The line traverses United States Postal Service Zip Codes 62025 and 62034.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 15, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 26, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 7, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 20, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NS's filing of a notice of consummation

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

by August 16, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: August 6, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–20875 Filed 8–13–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 64, No. 157
Monday, August 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–043]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 99–20772 appearing on page 43685 in the issue of Wednesday, August 11, 1999, the Docket No. is corrected to read as in the above heading.

[FR Doc. C9–20772 Filed 8–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

RIN 2120–AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

Correction

In rule document 99–20022 beginning on page 42585 in the issue of Thursday, August 5, 1999, make the following corrections:

1. On page 42589, in the first column, in the second full paragraph, in the fourth line, ‘‘Sate’’ should read ‘‘State’’.

2. On the same page, in the third column, in the second paragraph, in the 11th line, ‘‘28°22°14″N’’ should read ‘‘28°22′14″N’’.

3. On the same page, also in the third column, also in the second paragraph, in the 18th line, ‘‘28°27′05″N’’ should read ‘‘28°27′00″N’’.

4. On page 42590, in the billing code line below the diagram, ‘‘Filed 8–5–99’’ should read ‘‘Filed 8–4–99’’.

[FR Doc. C9–20022 Filed 8–13–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–98–4185 (HM–215C)]

RIN 2137–AD15

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

Correction

In rule document 99–4517, beginning on page 10742, in the issue of Friday, March 5, 1999, make the following corrections:

§ 172.101 [Corrected]

1. On page 10754, in the table, in column (2), the entry, ‘‘Battery, wet, with wheelchair, see Wheelchair, electric.’’ should read, ‘‘*Battery, wet, with wheelchair, see* Wheelchair, electric.

2. On page 10760, in the table, in the fifth entry, in column (9B), ‘‘75’’ should read ‘‘75 kg’’.

3. On the same page, in the table, in the entry ‘‘Dyes, solid, corrosive, n.o.s. *or* Dye intermediates, solid, corrosive, n.o.s.’’ in column (5), ‘‘1’’ should read ‘‘I’’.

4. On the same page, in the table, in column (2), in the ninth entry beginning ‘‘Elevated temperature liquid’’ in the last line of the entry, ‘‘ect’’ should read ‘‘etc’’.

5. On page 10762, in the table, in column (2), the entry ‘‘Metal alkyl hydrides, water-reactive, n.o.x. *or* Metal aryl hydrides, water-reactive, n.o.s.’’ should read, ‘‘Metal alkyl hydrides, water-reactive, n.o.s. *or* Metal aryl hydrides, water-reactive, n.o.s.’’

6. On page 10764, in the table, in column (2), the entry ‘‘Pyrethroid pesticide, liquid, flammable, toxic, *flashpoint not less than 23*°C.’’, should read ‘‘Pyrethroid pesticide, liquid, toxic, flammable, *flashpoint not less than 23*°C.’’

7. On the same page, in the table, in column (2), the entry ‘‘Pyrethroid pesticide, soild, toxic.’’ should read ‘‘Pyrethroid pesticide, solid, toxic.’’

8. On the same, in the table, in the same entry, in column (8C), sixth entry, ‘‘230’’ should read ‘‘240’’.

9. On the same page, in the table, in the tenth entry in column (4), ‘‘UN3305’’ should read ‘‘UN3005’’.

10. On page 10765, in the table, in the entry for ‘‘Xanthates’’, in column (3) , ‘‘42’’ should read ‘‘4.2’’.

11. On the same page, in the table, in column (2), the entry ‘‘Aminophenols (o–; m–; p)’’ should read ‘‘Aminophenols (o–; m–; p–)’’.

12. On the same page, in the table, in column (7), last entry, ‘‘TI’’ should read ‘‘T1’’.

13. On page 10766, in the table, the first entry in column (2) is corrected to read, ‘‘Ammonium nitrate fertilizers: *uniform non–segregating mixtures of nitrogen/phosphate or nitrogen/potash types or complete fertilizers of nitrogen/phosphate/potash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material*’’.

14. On the same page, in the table, in the first entry labeled ‘‘Articles, explosive, n.o.s’’ in column (9B), ‘‘75 kb’’ should read ‘‘75 kg’’.

15. On the same page, in the table, in column (2), the fifth entry is corrected to read ‘‘Batteries, wet, filled with acid, *electric storage*’’.

16. On the same page, in the table, in column (2), the sixth entry is corrected to read ‘‘Batteries, wet, filled with alkali, *electric storage*’’.

17. On page 10767, in the table, in column (2), the entry ‘‘dichloroamilines, liquid’’ should read ‘‘‘dichloroanilines, liquid’’.

18. On page 10768, in the table, in the entry for ‘‘Isobutyl isocyanate’’ in column (7), ‘‘T37698’’ should read ‘‘T38’’.

19. On page 10773, in the first column, in the 13th line, ‘‘AND’’ should read ‘‘and’’.

20. On the same page, in the same column in the 17th line, ‘‘I and III)’’ should read ‘‘I, II and III)’’.

21. On the same page, in the same column, ‘‘Toxic liquid, inorganic, n.o.s. (UN3287, Hazard Zones A and B)’’ should be added after line 17.

22. On the same page, in the same column, in the 28th line ''orgnic'' should read ''organic''.

23. On the same page, in the same column, in the 34th line ''UN3132'' should read ''UN3123''.

24. On the same page, in the second column, in the third line, ''organic'' should read ''inorganic''.

[FR Doc. C9–4517 Filed 8–13–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
August 16, 1999

Part II

Federal Reserve System

12 CFR Part 202
Equal Credit Opportunity; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1008]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is issuing this proposal to revise Regulation B, which implements the Equal Credit Opportunity Act (ECOA or Act), pursuant to the Board's policy of periodically reviewing its regulations. The Act makes it unlawful for creditors to discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, marital status, sex, age, and other specified bases. Major proposed revisions include removing the general prohibition against noting information about applicant characteristics such as national origin or sex, although such information still generally may not be considered in extending credit; requiring creditors to retain records for certain prescreened credit solicitations; and extending the record retention period for most business credit applications. Proposed revisions to the Official Staff Commentary are also included.

DATES: Comments must be received by November 10, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1008, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor or Kathleen C. Ryan, Staff Attorneys, Jane Jensen Gell, Senior Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or 452–2412; for the hearing impaired *only,* Diane Jenkins, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background on ECOA and Regulation B

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, prohibits a creditor from discriminating against an applicant in any aspect of a credit transaction on the basis of the applicant's race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). The ECOA is implemented by the Board's Regulation B.

When enacted in 1974, the ECOA prohibited discrimination on the basis of marital status and sex. In 1976, the Act was amended to add all of the other prohibited bases of discrimination. Over the years, several significant amendments have been made to the ECOA, including the following. In 1989, the ECOA was amended by the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692) to require that creditors give written notice to business applicants of the right to a written statement of reasons for a credit denial, and to impose a record retention requirement for certain business credit applications. In 1991, the ECOA was amended by the Federal Deposit Insurance Corporation Improvement Act (Pub. L. 102–242, 105 Stat. 2236) to provide applicants with a right to obtain a copy of any appraisal report used in connection with an application for credit to be secured by residential real property; the amendments also expanded the enforcement responsibilities of the federal financial supervisory agencies when information about possible violations of the ECOA becomes known. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended the ECOA to create a privilege for information developed by creditors as a result of ''self-tests'' they conduct.

II. The 1998 Review of Regulation B

Pursuant to requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, section 610(c) of the Regulatory Flexibility Act of 1994, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Board is reviewing Regulation B. The Board's last comprehensive review of Regulation B occurred in 1985. The Board began the current review of Regulation B in March 1998 by publishing an Advance Notice of Proposed Rulemaking (Advance Notice) (63 FR 12326, March 12, 1998). In addition to soliciting general comment on revisions to the regulation, the Board identified specific issues for comment involving: (1) Preapplication marketing practices, (2) the distinction between an inquiry about credit and an application for credit, (3) data notation for nonmortgage products, (4) the definition of creditor, (5) documentation for business credit, and (6) exceptions for business credit.

The Board received 330 comment letters on the Advance Notice. Most commenters addressed only the six issues identified in the Advance Notice. Based on its review and on the comments received, the Board now proposes revisions to Regulation B and the official staff commentary. In addition to comments on the proposed revisions, the Board requests specific suggestions for other revisions that would facilitate compliance with, or improve, the regulation.

III. Discussion of Proposed Revisions to the Regulation

Major proposed revisions include rules that remove the general prohibition against the notation—but not the use—of certain prohibited basis information (§ 202.5); extend the record retention period for certain business credit applications (§ 202.12); and require record retention for preapproved credit solicitations (§ 202.12). The following discussion covers the proposed revisions to the regulation section-by-section. A section-by-section discussion of proposed revisions to the commentary appears in Part IV.

Section 202.1—Authority, Scope and Purpose

No revisions are proposed in this section.

Section 202.2—Definitions

Revisions are proposed in the definitions of adverse action, application, and creditor in §§ 202.2(c)(1) and (c)(2), 202.2(f), and 202.2(l).

2(c) Adverse Action

2(c)(1)

Adverse action on a class of accounts—Section 202.2(c)(1)(ii) provides that adverse action includes a creditor's termination of or unfavorable change to the terms of an account, unless the action affects ''all or a substantial portion of a class of the creditor's accounts.'' Commenters asked the Board to clarify the exception—namely, the meaning of ''class of accounts'' and ''substantial portion'' of a class of accounts. Section 202.2(c)(1)(ii) would be revised to clarify the exception by changing the language from ''substantial portion'' to substantially all'' so that a creditor's action must affect the overwhelming majority of accounts in a designated class to be excluded from the definition of adverse action.

The ECOA and Regulation B require creditors to give consumers reasons for an adverse credit decision. The notice requirement enables some recipients to identify and remedy credit problems, and may also help detect unlawful credit discrimination. The exception in § 202.2(c)(1)(ii) is intended to address the circumstance where a creditor takes action that affects all or most of a type of its accounts, rather than targeting specific customers, and an adverse action notice seems unnecessary. For example, if a creditor terminates its secured credit card program entirely, adverse action notices will not likely serve the intended educational or anti-discrimination goals.

2(c)(2)

Section 202.2(c)(2)(iii) would be revised to conform to changes proposed under § 202.2(c)(1)(ii).

2(f) Application

The Board believes that a request for a preapproved loan under procedures in which a creditor issues creditworthy persons a written commitment to extend credit up to a designated amount that is valid for a designated period of time—even if subject to conditions—is an application. A ''preapproval'' without procedures involving a written commitment would be treated as a prequalification for purposes of the regulation. Section 202.2(f) of the regulation would be revised accordingly. In addition, technical revisions would be made to the definition of application for clarity.

2(l) Creditor

Section 202.2(l) would be revised to clarify that the definition of ''creditor'' applies to a person who regularly participates in making a credit decision, including setting terms—not just the decision of whether to extend or deny credit. (*See* detailed discussion of the definition of ''creditor'' in ''Part IV. Discussion of Proposed Revisions to the Official Staff Commentary'' under § 202.2(l).)

Section 202.3—Limited Exceptions for Certain Classes of Transactions

Revisions are proposed in §§ 202.3(a)(2), 202.3(b)(2), and §§ 202.3(c)(1) and (2) relating to public-utilities, securities, and incidental credit.

The regulation provides certain exceptions for public-utilities, securities, incidental, and government credit. Each of these types of credit remains subject to the general prohibition on discrimination; the exceptions generally cover issues such as record retention, inquiries about marital status and spousal information, and furnishing credit information. Credit that does not meet the definitions is subject to the full coverage of Regulation B.

The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception for a class of transactions if the Board determines, after making an express finding, ''that the application of [the Act] or of any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act].'' 15 U.S.C. 1691b. After analysis, the Board believes that extending some of the exceptions is still appropriate, and that applying the rules of Regulation B in their entirety would not contribute substantially to effectuating the purposes of the Act, as discussed below.

3(a) Public-Utilities Credit

3(a)(2) Exceptions

Public-utilities credit refers to extensions of credit that involve public-utility services if the charges for the service, delayed payment, and any discount for prompt payment are filed with or regulated by a governmental unit, such as a public-utilities commission. Public-utilities credit is subject to all of the regulatory requirements except those relating to collecting information about marital status, furnishing credit information to consumer reporting agencies, and retaining records. The proposed rule would retain the relief from the record retention requirements only. Regulation B permits inquiries into an applicant's marital status only in limited circumstances. The exception from this provision permits creditors offering public-utilities credit to request information concerning marital status in all instances. The Board believes this exception is no longer needed and is proposing to remove the exception. Specific comment is solicited on this change.

The proposed rule also would remove the exception relating to the furnishing of credit information under § 202.10 (concerning accounts held or used by spouses). The requirements of § 202.10 apply only to creditors that furnish credit information to consumer reporting agencies or to other creditors. Such creditors are required to furnish information that reflects the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. Creditors are considering public-utilities payments more frequently as a source of repayment history for underwriting purposes. Thus, the Board believes that it would be helpful to consumers if public-utility companies that furnish credit payment information were subject to the same reporting requirements as other creditors subject to the ECOA. The Board seeks comment on this approach.

The regulation requires creditors to retain certain records. Public-utilities credit is not subject to the record retention requirements. The Board would retain the exception regarding record retention because public-utility companies must keep records pursuant to regulations of other governmental bodies—often for longer periods of time than required by the ECOA. The Board believes that extending this exception is appropriate because requiring record retention would not contribute substantially to effectuating the purposes of the Act.

3(b) Securities Credit

3(b)(2) Exceptions

Securities credit is credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation under that act. Brokers and dealers are required to inquire about the financial activities of spouses to comply with the rules of the Securities Exchange Act and the National Association of Securities Dealers. For this reason, Regulation B excepts securities credit from several provisions including, among others, signature rule requirements, rules relating to record retention, and requesting information about the sex of an applicant. Given that the Board proposes to remove the prohibition against the collection of information about certain applicant characteristics, the current exception in § 202.3(b)(2)(iii) would be redundant. The Board believes that it is appropriate to extend the other exceptions related to information concerning a spouse or former spouse, marital status, name designations, open-end accounts, spousal signature requirements, the furnishing of credit information, and record retention. Securities credit is subject to an extensive regulatory scheme, and applying those provisions of Regulation B would not contribute substantially to effectuating the purposes of the ECOA. Technical revisions would be made for clarity, with no substantive change intended.

3(c) Incidental Credit

3(c)(1) Definition

Currently, incidental credit is limited to consumer credit that is not: (1) Made pursuant to the terms of a credit card account, (2) subject to a finance charge under Regulation Z (Truth in Lending), or (3) payable by agreement in more than four installments. This type of credit might be extended, for example, by a local merchant that does not normally extend credit, to a long-standing customer; or by a doctor or lawyer, as an accommodation to a patient or a client.

The proposed rule would expand the exception for incidental credit to include incidental business credit, as the Board believes that full regulatory coverage of such credit does not contribute substantially to effectuating the purposes of the Act. Incidental business credit would be defined as business credit that is not made pursuant to the terms of a credit card account, is not subject to interest charges or fees, and is not payable by agreement in more than four installments. The Board solicits specific comment on this proposed change.

3(c)(2) Exceptions

Incidental credit is excepted from a number of provisions in the regulation including requesting information about an applicant's marital status, spouse or former spouse, and certain sources of an applicant's income. The proposed rule would eliminate the exception for requesting information about the sex of an applicant, in light of the Board's proposal to remove the prohibition against the collection of information related to a prohibited basis. The proposed rule would extend the other exceptions concerning information about an applicant's spouse or former spouse, marital status, income sources, signatures, notifications, the furnishing of credit information, and record retention. The Board believes that, given the nature of the credit extension, applying these rules would not contribute substantially to effectuating the purposes of the Act.

3(d) Government Credit

With regard to government credit, the exceptions apply to extensions of credit made *to* governments or governmental subdivisions, agencies or instrumentalities. The Board believes that extending these exceptions remains appropriate, as applying the rules would not contribute substantially to effectuating the purposes of the Act.

Section 202.4—General Rule Prohibiting Discrimination

Revisions are proposed in § 202.4. In the Advance Notice, the Board solicited comment on how and to what extent creditors are using prohibited bases in preapplication marketing—specifically, prescreened solicitations—to determine whether the coverage of the regulation should be expanded to such practices. Although this section includes a discussion of the issue, the proposed rule does not recommend expanding the regulation's coverage to prescreened solicitations; however, § 202.12(b)(7) would require creditors to retain certain records related to preapproved credit solicitations.

General Rules

Section 202.4 would be revised to incorporate general rules that apply under the regulation, some of which are currently in other sections of the regulation and official staff commentary. The Board believes this approach would facilitate compliance with the regulation. Section 202.4(a) would provide the general rule against discrimination. Section 202.4(b) would provide the general rule against discouraging applications. Section 202.4(c) would provide the rule for when written applications are required.

Section 202.4(d) would contain new clear and conspicuous and retainability standards that the Board is proposing to apply to the disclosures and other information required to be in writing. In March 1998, the Board requested public comment on a proposal to permit the electronic delivery of disclosures for four of its consumer protection regulations: Regulation B; Regulation M, Consumer Leasing; Regulation Z, Truth in Lending; and Regulation DD, Truth in Savings (63 FR 14533–14552, March 25, 1998). Except for Regulation B, each of those regulations expressly provides that creditors must present required information in a clear and conspicuous manner, in a form the consumer may keep. Accordingly, the Board proposed that the clear and conspicuous and retainability standards be applied to information required under Regulation B (63 FR 14552, March 25, 1998). Their inclusion in § 202.4 is consistent with that proposal.

Prescreened Solicitations

The ECOA prohibits discrimination by a creditor against an *applicant* on a prohibited basis regarding any aspect of a credit transaction. Regulation B defines an applicant as a person who has requested or received credit. A credit transaction is defined by Regulation B as covering every aspect of an applicant's dealings with a creditor, beginning with requests for information. Thus, the coverage of the ECOA is generally limited to a person who has, at a minimum, sought credit information. The law does not generally extend to a creditor's preapplication marketing practices—such as the selection of persons solicited for a credit card. The regulation applies only after individuals respond to a creditor's offer of credit. But because a person could be discouraged from seeking credit or credit information, the regulation expressly prohibits a creditor from engaging in any practice that would discourage a reasonable person (on a prohibited basis) from applying for credit. The regulation also applies to advertising.

Creditors use a number of techniques to identify potential recipients of credit. For instance, creditors will often specify criteria to consumer reporting agencies, which then draw on information from credit files to compile mailing lists of persons who meet those criteria. This marketing technique—involving prescreened solicitations—is typically carried out through mailed solicitations as well as by telemarketing.

There has been concern through the years that Regulation B generally does not apply to preapplication marketing. During the 1985 review of Regulation B, the staff presented to the Board the issue of whether prescreened solicitations should be made subject to the regulation, but recommended against coverage. While recognizing the potential for unfair treatment in such practices, available evidence did not support a finding that creditors were improperly making use of prohibited characteristics. Moreover, it was thought that prescreened solicitations could result in a greater availability of credit to many consumers. Accordingly, the Board did not propose to expand the regulation's coverage to such practices.

Over the past several years, the Board has become aware (through its own observations and those of other federal financial regulatory agencies) of instances in which creditors, primarily in the credit card industry, use age to identify potential recipients of preapproved credit. In some instances, creditors have used zip codes to exclude credit solicitations in low-income areas that represent predominantly minority neighborhoods. In other cases, creditors have used ethnicity or gender to target potential customers in affirmative-outreach programs.

The Board raised the issue of prescreened solicitations for public comment in its Advance Notice. Specifically, the Board requested comment on how and to what extent creditors are using a prohibited basis in preapplication marketing. Of the industry commenters who addressed preapplication marketing, only a few discussed the extent to which the selection criteria include a prohibited basis. These commenters indicated that except for using age to identify consumers too young to be approved for credit, or to identify potential customers for unique products such as reverse mortgages, they do not directly use prohibited bases in preapplication marketing.

The majority of commenters—primarily creditors and their trade associations—addressed the more general issue of whether the Board should expand the regulation's coverage to preapplication marketing practices. Most of these commenters opposed any expansion. These commenters were concerned that an expansion of Regulation B would prevent creditors from marketing their products to those most likely to respond. They stated, for example, that a creditor offering products that are used predominantly by women might be prohibited from targeting consumers on a mailing list for a magazine geared toward women. Some commenters believed that the regulation's protections need not apply to prescreened solicitations because they are only one aspect of a creditor's overall marketing program, and that consumers who are not solicited may nevertheless obtain credit from the creditor. A few questioned the Board's legal authority to expand the regulation's coverage beyond ''applicants.''

Others—including most of the federal financial enforcement agencies and consumer advocates that commented—favored expanding the coverage of Regulation B to preapplication marketing practices. Some of these commenters expressed concern that currently a creditor is permitted to use a prohibited basis to limit or avoid extending credit by target marketing to certain groups. Other commenters believed that regulatory coverage of solicitations is necessary to fulfill the Act's purpose, arguing that those not solicited are denied information that could lead them to apply for credit. Some commenters expressed concern about the inconsistent approaches between the Fair Housing Act, which extends coverage to preapplication marketing, and the ECOA, which does not.

Prescreened credit solicitations are not new, particularly credit card solicitations. The use of prescreened solicitations has become more commonplace beyond credit cards, however, and in some instances may be the primary vehicle for offering credit. In the marketing of some credit cards, prescreened solicitations often offer discounted introductory rates, attractive terms, and enhancements (such as purchase discounts) to those solicited that may not be available through other application channels. Prescreened solicitations can be used to target consumers most likely to use a particular credit product, or to target segments of the population that in the creditor's experience are most likely to respond to the offer of credit. Conversely, prescreened solicitations can be used to exclude some consumers from offers of credit. They can also be used to target consumers in certain neighborhoods for less favorable credit products or less favorable terms.

Covering credit solicitations without providing many exceptions could have unintended consequences. For example, it could result in prohibiting practices that increase credit availability. Targeted marketing through prescreened solicitations can effectively increase access to credit for consumers. Moreover, while there is anecdotal evidence that creditors do target potential applicants on the basis of age and geographic location, such evidence is somewhat limited; it does not suggest that the application of Regulation B rules is warranted at this time. Because of concerns about the potential impact on some segments of the population, however, the Board believes that taking other steps would enable the Board and the other enforcement agencies to monitor solicitation practices in a more systematic way than has been possible to date.

The ECOA directs the Board to prescribe regulations to carry out the purposes of the Act. Further, section 703(a)(1) of the Act authorizes the Board to make ''such classifications * * * adjustments and exceptions * * * as in the judgment of the Board are necessary or proper to effectuate the purposes of [the law] * * * or to prevent circumvention or evasion * * * .'' 15 U.S.C. 1691b. The Board proposes to use this exception authority to require creditors to keep records related to certain prescreened solicitations—namely, preapproved credit solicitations. The Board's proposal adds a new § 202.12(b)(7).

For purposes of the proposed rule, a preapproved credit solicitation is defined as the ''firm offer of credit'' described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act (FCRA). Under the FCRA, a person that receives a list of consumers from a consumer reporting agency in connection with credit transactions not initiated by the consumers must generally offer credit to the consumers on the list, subject to certain exceptions. 15 U.S.C. 1681b(c)(1)(B). A creditor must maintain the criteria used to select the consumers for three years after the date the credit offer is made. 15 U.S.C. 1681m(d)(3). The Board's draft rule would require creditors to retain (for 25 months after a creditor solicits potential applicants for credit) certain information related to preapproved credit solicitations: the list of criteria used to select potential customers, the text of the solicitation mailing, correspondence (to and from selected potential customers) related to complaints—whether formal or informal—about the solicitation, and the portion of the marketing plan (including any response model) to which the solicitation relates.

The draft rule would require creditors to retain information that the Board believes they already retain for business and other reasons. The Board solicits comment on the incremental burden associated with retaining information beyond the records creditors already retain under the FCRA or for business purposes.

The information required by the proposed rule—the criteria for selection, the solicitation, correspondence, and the marketing plan to which the solicitation relates—should allow for an effective review and analysis of creditors' possible use of prohibited bases in preapproved credit solicitations. For entities that are regularly examined, the Board believes that the most effective way to review and evaluate creditor practices would be through the use of the examination process.

Section 202.5—Rules Concerning Taking of Applications

Section 202.5 of the regulation would be revised.

Because the ECOA makes it unlawful for creditors to consider any of the prohibited bases of discrimination in a credit transaction, Regulation B generally has prohibited creditors from inquiring about, or noting, those applicant characteristics in any aspect of a credit transaction. This general prohibition was intended to discourage discrimination, based on the premise that if creditors cannot inquire about or note such information, they are less likely to unlawfully consider the information. For home mortgage lending (given frequent allegations and concerns about unlawful discrimination) the regulation has required creditors, since 1977, to note the applicant's national origin or race, marital status, sex, and age in applications for home purchase loans, so that enforcement agencies can better monitor home mortgage lenders' compliance with the ECOA. The Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.* (implemented by Regulation C), imposed a similar data collection requirement in 1989 that applies to mortgage loans more broadly, encompassing home improvement loans in addition to home purchase loans.

In 1995, the Board proposed to remove the prohibition against noting an applicant's race, color, religion, national origin, and sex for *nonmortgage* credit products. The proposed revision was published at the time the banking agencies were revising regulations that implement the Community Reinvestment Act; the proposal responded to concerns about whether creditors were meeting the needs of their communities, particularly for small business and small farm lending. The majority of the comments received on the 1995 proposal opposed removal of the prohibition, generally expressing concern that voluntary data notation would lead to mandatory data collection and result in substantially increased costs and burden. In addition, many commenters raised concerns about the quality of the data that would be obtained, given that supplying information would be voluntary and not all applicants would choose to provide it. Commenters who supported removal of the prohibition believed that the data would allow creditors to better identify underserved groups and design programs to address unmet credit needs; they also believed that it would provide useful data for evaluating creditors' compliance with fair lending laws. After extensive deliberation, the Board withdrew the proposal in December 1996, and stated that, given the political sensitivity of the issues involved, the matter was better left to the Congress.

The Board's 1998 Advance Notice solicited comment on whether the Board should again consider removing the prohibition for nonmortgage credit products, in its review of Regulation B. The Advance Notice raised the issue in response to concerns that continue to be expressed by the Department of Justice and some of the federal financial enforcement agencies, pointing to anecdotal evidence of discrimination in connection with small business and other types of credit. These agencies believe that the ability to obtain and analyze data about race and ethnicity (such as creditors might collect on a voluntary basis) would aid fair lending enforcement. In addition, some creditors continue to express interest in being able to note—on a voluntary basis—information about the ethnicity, sex, and race of their applicants and borrowers to evaluate compliance with fair lending laws, as well as for marketing and outreach initiatives. Small-business owners and community groups also continue to strongly support data notation, particularly for small business lending.

More than 300 commenters addressed the issue in response to the Advance Notice. Many commenters—primarily banks and banking trade associations—urged the Board not to remove the prohibition. These commenters believed that, if the prohibition were to be removed, examiners and others would pressure depository institutions to collect data. They feared that a requirement to collect data would soon follow, which would impose a substantial burden on institutions. These commenters expressed concern that creditors that obtained data about race, ethnicity, and other applicant characteristics would be subjected to greater scrutiny by enforcement agencies. They also stated that data notation is intrusive of consumers' privacy, and would encourage a perception of creditors' using the data to discriminate. Some commenters stated that data noted on a voluntary basis would be unreliable and that the lack of standards for notation could render the quality of data questionable. (In some cases, commenters used this criticism to argue against lifting the prohibition; in other cases, they used it to argue for mandatory data collection.) Commenters also suggested that the current rule effectively discourages discrimination because loan officers often do not have access to information that would enable them to discriminate on a prohibited basis.

Many other commenters—including most of the federal financial enforcement agencies, the Department of Justice, the Department of Housing and Urban Development, small businesses and their trade associations, consumer advocates, community organizations, and some banks—favored removing the prohibition. A number of commenters favored removing it for all nonmortgage credit products, but most of those who favored lifting the ban were focused on small business lending. Some of these commenters believed that the most effective way to monitor and enforce fair lending compliance on small business loans is with mandatory collection, although they see voluntary notation for such loans as an important first step. They said that allowing data notation would enable creditors and government agencies to monitor for possible discriminatory practices, and might enable creditors to better target underserved markets for small business or other lending. Some commenters suggested that, in the case of home mortgage lending, the mandatory collection and disclosure of data have increased access to those products for low-income and minority consumers.

The Board proposes to remove the prohibition against noting information about an applicant's race, color, religion, national origin, and sex for all credit products. Consideration of such information in evaluating creditworthiness, except as permitted by law, would continue to be prohibited by the ECOA and Regulation B. The Board recognizes that removing the prohibition would allow loan officers to have access to information on applicant characteristics that might not otherwise be available and, thus, could provide the opportunity for unlawful discrimination. Also, the Board recognizes that the usefulness of the data for fair lending enforcement purposes would depend on whether creditors implement standards for uniform collection of the data—such as by product, for all applicants, for all borrowers, etc. On balance, however, removing the prohibition for all nonmortgage credit may allow issues of credit discrimination to be better addressed. Because notation would be on a voluntary basis, creditors could target those products where particular concern exists about potential discrimination.

The proposed rule provides that applicants may not be required to provide information about their race, color, religion, national origin, or sex. It also requires creditors who request information on applicant characteristics to disclose—at the time they request the information— that providing it is optional, and that the creditor will not take the information (or the applicant's decision not to provide the information) into account in any aspect of the credit transaction. (See proposed § 202.5(a)(4).) (A proposed model notice is included in Appendix C.) The Board seeks comment on this approach.

Section 202.5(a) would be moved to § 202.4. Sections 202.5(b)–(d) would be redesignated as §§ 202.5(a)–(c), and the rules in those sections barring information requests about sex, race, color, religion and national origin would be removed. The proposed removal does not extend to substantive rules relating to marital status that effectuate the antidiscrimination provisions of the Act. Some technical edits would be made to newly-designated §§ 202.5(a)(1), (a)(2), and (a)(3), and to newly-designated §§ 202.5(b)(2) and (b)(3). Part of existing § 202.5(d)(5) concerning inquiries about permanent residency and immigration status would be moved to newly-designated § 202.5(c)(5). Also, § 202.5(e) would be moved to § 202.4 to facilitate compliance with the regulation.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in § 202.6(b).

6(b) Specific Rules Concerning Use of Information

6(b)(8)

Section 202.6(b)(8) would be added to clarify that a creditor may not evaluate married and unmarried applicants by different standards. The Board believes that this guidance— currently in the commentary—is more appropriately placed in the regulation.

6(b)(9)

A new paragraph 202.6(b)(9) would be added to make clear that a creditor may not consider race, color, religion, national origin, or sex to determine an applicant's creditworthiness, except as permitted by law; nor may the creditor consider the applicant's decision not to provide the information.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

Section 202.7(d)(1) would be revised to clarify the rule concerning joint applications for credit. Regulation B does not require written applications for business credit. Often, requests are made orally or without a formal written application. In such cases, a creditor usually requests that the applicant submit a financial statement for evaluation. As a general rule, Regulation B prohibits creditors from requiring the signature of a person other than the applicant on any credit instrument if the applicant is individually creditworthy. Where the financial statement submitted by the applicant lists jointly held property and is signed by both property owners (attesting to the accuracy of the data), some creditors are treating the financial statement as an indication that the owners are making a joint application for credit. In those cases, both owners often are being required to sign the promissory note—even where the request for credit has been made only by the property owner engaged in operating the business. The Board believes that a joint property owner's signature on a financial statement (to attest to the accuracy of information) alone does not represent definitive evidence of a joint application.

In the Advance Notice of Proposed Rulemaking, the Board asked whether additional guidance should clarify the mechanisms through which an application for joint credit can be evidenced. Although some commenters stated that a written application is the best mechanism to establish an application for joint credit, other commenters believed the Board should provide additional guidance on the issue.

The Board does not propose to require written applications for business credit. Section 202.7(d)(1), however, would be revised to clarify that the submission of joint financial information or other evidence of jointly held assets does not of itself constitute an application for joint credit. The rule would apply to both consumer and business credit. In addition, the official staff commentary would be amended to suggest ways in which a creditor may obtain a clear indication of a joint application. (See proposed comment 7(d)(1)–3.)

Section 202.8—Special-Purpose Credit Programs

Technical revisions are proposed in § 202.8(a)(3).

8(a) Standards for Programs

Section 202.8(a)(3) of the regulation, which addresses special-purpose credit programs offered by for-profit organizations, would be revised. The Board believes that paragraphs (a)(3)(i) and (ii) set forth the criteria; the phrase regarding ''special social needs'' would be deleted to eliminate confusion.

Section 202.9—Notifications

Revisions are proposed in §§ 202.9(a)(3) and 202.9(b)(2).

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

9(a)(3) Notification to Business Credit Applicants

The regulation provides for exceptions from certain notification and record retention requirements for business credit if the business had gross revenues in excess of $1 million in its preceding fiscal year, or if the business requested an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit. The Board is required periodically to review the exceptions to determine whether they should be retained. The Act provides that the Board may extend an exception if the Board determines, after making an express finding, ''that the application of [the Act] or any provision of [the Act] of such transaction would not contribute substantially to effecting the purposes of [the Act].'' (*See* 15 U.S.C. 1691b.)

The Advance Notice of Proposed Rulemaking requested comment on whether the limited exceptions are still appropriate. Some commenters stated that the exceptions should be eliminated; they believe business applicants, like consumer applicants, need adverse action notices to ensure that they have been treated fairly and not denied credit on a prohibited basis. Most commenters, however, favored retaining the current exceptions. These commenters stated that business applicants tend to be more sophisticated than consumer applicants and, therefore, generally do not need the same protections as consumers. Some commenters suggested changing the test for when the exceptions apply; some commenters suggested lowering the $1 million threshold. Others suggested using the amount of the credit request rather than the size of the business.

The Board believes that applying the rules in full or changing the current test, which is based on a $1 million gross revenue threshold, would not contribute substantially to effectuating the purposes of the ECOA. Accordingly, the Board believes the exceptions based on the current threshold are still appropriate and should be extended. The $1 million threshold is consistent with the legislative history of the Women's Business Ownership Act of 1988 (Pub. L. No. 100–533, 102 Stat. 2692), which amended the ECOA. That history suggests that the amendments were intended primarily to apply to small businesses. When the rule was adopted in 1989, 86 percent of all businesses had gross revenues of $1 million or less a year. Retaining the $1 million threshold would provide nearly the same percentage of all businesses (currently 85 percent) with the additional protections. In addition, the Board believes that a gross revenue test is easier for creditors to administer than other suggested tests, such as basing the exceptions on the sophistication of the applicant.

Section 202.9(a)(3)(ii) would be revised to require that creditors disclose, to businesses with gross revenues in excess of $1 million in the preceding fiscal year, the right to a written statement of reasons for adverse action. Currently, creditors must provide a written statement of reasons for adverse action if the applicant requests the statement within 60 days of being notified of adverse action. Requiring disclosure of the right should not significantly increase burden for creditors, and will benefit applicants who may not be aware of their right to the written statement of reasons.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2) Statement of Specific Reasons

Section 202.9(b)(2) would be revised to clarify that whether a creditor's denial of credit is based on the creditworthiness of the applicant, a joint applicant, or guarantor, the reasons for adverse action must be specific. For example, a general statement that ''the joint applicant did not meet the creditor's standards of creditworthiness'' is insufficient.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in this section.

Section 202.11—Relation to State Law

Technical revisions would be made in this section.

Section 202.12—Record Retention

Revisions are proposed in § 202.12(b). Proposed § 202.12(b)(7) provides the record retention requirements for preapproved credit solicitations. (See detailed discussion in § 202.4.)

12(b) Preservation of Records

Section 703(a)(4) of the Act requires creditors to retain records or other data related to business loans ''as may be necessary'' to evidence compliance with the Act. These records must be retained no less than one year, unless otherwise excepted. Currently, § 202.12(b) requires creditors to retain credit applications and other records for 12 months for business credit. Under the proposal, a 25-month record retention period would apply to credit applications involving businesses with gross revenues of $1 million or less; the rule would remain unchanged for credit applications involving other businesses.

The Board believes that increasing the record retention period would assist the federal financial regulatory agencies, in particular, in monitoring and enforcing compliance with the Act, given the relatively low volume of business loans on a yearly basis for some institutions, and given the agencies' reduction of examination frequency (from 18 to 24 months, and in some instances to 36 months). Sections 202.12(b)(1), (2), (3), and (4) would be revised accordingly. In 1989, the Board proposed to establish a 25-month record retention period. Creditors expressed concern about the space required to store documents and the costs associated with longer storage, and the Board adopted the 12-month record retention period. The Board believes these concerns may no longer be compelling given technological advances and the use of electronic storage. The Board seeks specific comment on the potential burden associated with retaining information for the additional period.

12(b)(7) Preapplication Marketing Information

A new paragraph 202.12(b)(7) would be added to the regulation to include the record retention requirements for certain preapplication marketing information.

Section 202.13—Information for Monitoring Purposes

No revisions are proposed in this section.

Section 202.14—Enforcement, Penalties and Liabilities

Revisions are proposed in § 202.14(c). Technical revisions would be made in § 202.14(b).

14(c) Failure of Compliance

Section 202.14(c) would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.15—Incentives for Self-Testing and Self-Correction

Minor revisions are proposed in § 202.15(d)(1).

15(d)(1) Scope of Privilege

Section 202.15(d)(1)(ii) would be revised, consistent with proposed changes to §§ 202.4 and 202.5(a).

Appendix A to Part 202—Federal Enforcement Agencies

Revisions are proposed in Appendix A to reflect changes in the names and addresses of some agencies.

Appendix B to Part 202—Model Application Forms

Appendix B would be revised to reflect proposed revisions to § 202.5. Technical revisions would also be made for clarity.

The ''Residential loan application'' model form would be replaced with an updated ''Uniform residential loan application'' form (FHLMC 65/FNMA 1003). The Board solicits specific comment on whether revisions should be made to the other model application forms.

Appendix C—Sample Notification Forms

Appendix C would be revised to reflect proposed revisions to § 202.5. A new model form C–10 would be added to provide the disclosure requirements for creditors who request information voluntarily on applicant characteristics. Also, the Board solicits specific comment on whether revisions should be made to the existing sample notification forms.

IV. Discussion of Proposed Revisions to the Official Staff Commentary

The following discussion covers the proposed revisions to the official staff commentary section-by-section. Such revisions include clarifying: the definition of adverse action (§ 202.2(c)); the definition of application in regard to certain preapprovals (§ 202.2(f)); the disclosure requirement if a creditor asks for applicant characteristics (§ 202.5(a)); and the nonapplicability of the self-testing privilege to information requested voluntarily about applicant characteristics (§ 202.15(b)).

Section 202.1—Authority, Scope, and Purpose

No revisions are proposed in this section of the commentary.

Section 202.2—Definitions

Revisions are proposed in comments to §§ 202.2(c)(1) and (c)(2), 202.2(f), 202.2(l), and 202.2(z).

2(c) Adverse Action

2(c)(1)

Counteroffers in connection with credit solicitations—Proposed comment 2(c)(1)(i)–2 addresses credit solicitations. The comment would clarify that where a consumer who receives a solicitation requests a specific amount of credit and the creditor offers a different amount, the creditor's action constitutes a counteroffer.

Adverse action on a class of accounts—Proposed comment 2(c)(1)(ii)–1 would clarify the terms ''substantially all'' and ''class of accounts.'' Existing comments 2(c)(1)(ii)–1 and –2 would be renumbered.

2(c)(2)

Express agreement—Proposed comment 2(c)(2)(i)–1 would clarify when an adverse action notice is required for a change in the terms of an account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not affect a creditor's ability to change the terms under its agreement with the consumer.

Current delinquency or default—An adverse action notice is not required if a creditor takes action on an account due to a current delinquency or default on that account. Comment 2(c)(2)(ii)–2 would be revised, and an example would be added, to clarify this interpretation.

Activity on a different account—Proposed comment 2(c)(2)(ii)–3 would clarify that an adverse action notice is required if a creditor treats an account as delinquent or in default due to activity on another account. This comment solely addresses when a creditor is required to provide an adverse action notice; it does not address what activity constitutes a delinquency or default under the agreement between the parties.

2(f) Application

Inquiries about or applications for credit

In the Advance Notice, the Board solicited comment on whether it should provide additional guidance to further clarify the current distinction between an inquiry about credit and an application for credit. Specifically, the Board asked whether it should devise a different test for determining when a discussion becomes an application and, if so, what should be the test.

The ECOA requires creditors to provide notice of action taken within certain time frames following the creditor's receipt of a completed application. Regulation B defines an application as ''an oral or written request for an extension of credit that is made in accordance with procedures established by the creditor for the type of credit requested.'' This enables the creditor to establish as formal or informal a process as it wishes.

The official staff commentary, through examples, encourages creditors to provide consumers with information that will assist them in the credit shopping process. The flexibility provided allows creditors to give information without entering into a formal application process, and thus to avoid triggering the notice and recordkeeping rules. To deter creditors from discouraging prospective applicants on a prohibited basis, however, the rule deems a creditor's negative response to an inquiry to represent the denial of an application for credit. That is, a credit inquiry can be deemed an application if, in giving credit information to a potential applicant, the creditor evaluates information about the individual, decides that the individual does not meet the creditor's criteria for creditworthiness, and informs the individual accordingly. In that case, an adverse action notice is required and records are retained.

Many industry commenters expressed concern that the current test is difficult to apply because when a creditor has ''declined'' a request is not always clear. According to these commenters, it is often unclear when a creditor's discussion of negative factors, such as a person's poor payment history on loans, triggers an adverse action notice. Some commenters noted that, due to this lack of clarity, they often provide an adverse action notice to consumers to whom they give negative information—a procedure they view as burdensome and not necessarily helpful to many consumers. They believe the notice may discourage some consumers from later applying for credit, especially if those consumers initially were only seeking information.

Other commenters supported the current test; they believe that the test provides the flexibility they need. These commenters expressed reservations about changing a rule that creditors are already familiar with. They also expressed concern that a change in the rule could require creditors to change the way they conduct business. Some commenters, including industry and consumer representatives, stated that adverse action notices should be given whenever consumers are informed that they are ineligible or lack the qualifications for credit, regardless of the stage in the credit process.

In response to commenters' concerns about when an adverse action notice is required, the Board considered whether a different test is appropriate. The Board focused on creditors' use of new delivery channels for loan products and information (such as the Internet), and growth in credit counseling and prequalification programs. Many of these developments result in consumers asking for and receiving information about credit products—and about their own creditworthiness—prior to submitting an application for credit.

The Board solicited comment on a number of issues concerning the definition of ''application.'' The Board asked whether a ''bright-line'' test would best distinguish between an inquiry and an application (for example, whether obtaining a credit report should always trigger an application). Some commenters believed that such a test could eliminate confusion and inconsistent treatment among lenders. Others opposed a bright-line test, stating that any proposed test needs to have sufficient flexibility to accommodate evolving approaches to lending (such as prequalification requests) and homeownership and small business loan counseling. Commenters noted that given rapid changes in lending practices and technology, today's bright-line test might not be appropriate in the future.

The Board also asked whether it would be desirable or possible to apply the current notification rules to homeownership counseling programs that engage in credit evaluations; often, a credit report is obtained to determine the consumer's financial circumstances and to assist in an ongoing counseling process. Most commenters did not believe the current rules should be applied to such programs. They generally supported a rule that would encourage counseling without imposing burdensome notification requirements.

Finally, the Board solicited comment on whether the issue of distinguishing an inquiry from an application also arises in nonmortgage credit, such as credit card, automobile, and small business lending. Most commenters believed the issues were similar, and that there was nothing unique about nonmortgage credit that requires a different test; they generally believed that, for purposes of consistency, all credit should be subject to the same test.

Given changes in technology, and creditors' use of varying procedures and mechanisms to deliver their credit products, on balance the Board believes that retaining the flexibility of the current test is appropriate. Comment 2(f)–3 would clarify that prequalifications are subject to the test currently applicable to inquiries. Under that test, a creditor provides an adverse action notice if the creditor communicates a denial. Proposed comment 2(f)–5 gives an example of preapprovals that are treated as applications, in keeping with the proposed addition to § 202.2(f) of the regulation. Existing comment 2(f)–5 would be redesignated.

2(l) Creditor

The ECOA and Regulation B prohibit a creditor from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction. The ECOA's definition of creditor includes anyone who ''regularly extends'' or ''regularly arranges for'' the extension of credit, as well as any assignee of an original creditor who ''participates in the decision'' to extend credit. Regulation B combines these concepts and defines a creditor as a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit, including persons such as a potential purchaser of an obligation who influences the creditor's decision. Brokers or others who regularly refer applicants to creditors (or who select or offer to select creditors to whom applications can be made) are creditors for purposes of §§ 202.4 and 202.5(a) (the prohibitions against discrimination and discouragement) which are §§ 202.4(a) and (b), respectively, under the proposed rule. Regulation B also provides that a person (who may otherwise be a creditor) is not a ''creditor'' with respect to a violation of the ECOA or the regulation committed by another creditor unless the creditor ''knew or had reasonable notice of'' the act, practice, or policy that constituted the violation before becoming involved in the credit transaction.

In the Advance Notice of Proposed Rulemaking, the Board requested comment on the definition of the term ''creditor.'' The Board noted that creditors'' distribution systems for lending services and products have expanded over the years, and that creditors have increasingly asked for guidance about how the term applies when a lender acts in conjunction with other creditors and discrimination occurs. Specifically, the Board solicited comment on whether it is feasible for the regulation to provide more specific guidance given that most issues will depend on the facts of a particular case. A slight majority of commenters asked the Board to provide more specific guidance. Some of these commenters requested that the Board provide a clearer description of the conduct that triggers liability. Other commenters requested that the Board expressly state the types of persons that are considered to be creditors under the regulation. Some commenters opposed more specific guidance on the belief that whether the definition applies must be determined on a case-by-case basis.

The Board also solicited comment on whether the current test—which relies on whether a person knew or had reasonable notice of an act of discrimination—should be modified. Some commenters believed that the test should be modified to clarify that a creditor is not responsible for the acts of another creditor where the creditor does not have control over the other creditor's activities. Some commenters stated that the Board should change the test to ''actual'' notice. Other commenters were concerned that the Board may change the test to impose a stricter standard; these commenters believed that a stricter standard could force creditors to discontinue many types of credit programs. Some consumer advocates expressed concern that the current test encourages creditors to pass on the ultimate underwriting responsibilities to avoid knowledge of another creditor's activities. Most commenters believed the current test should not be modified. Some of these commenters stated that the Board should clarify through the staff commentary what constitutes ''reasonable notice.''

Finally, comment was solicited on whether the regulation should address under what circumstances a creditor must monitor the pricing or other credit terms when another creditor (for example, a loan broker) participates in the transactions and sets the terms. Some commenters believed the regulation should address monitoring to explicitly state that there is no such requirement. Some of these commenters stated that creditors would not have sufficient information to evaluate another creditor's practices and policies. Other commenters stated that monitoring could force creditors to restrict the third parties with whom they do business based on the size and capability of their monitoring systems. Some commenters believed that the regulation should explicitly state that there is a monitoring requirement implicit in the ''reasonable notice'' test. A slight majority of commenters opposed the regulation's addressing whether a creditor must monitor the acts of other creditors.

The Board considered whether, given the wide variety of ways that creditors conduct business involving more than one creditor, a new test could provide clearer guidance. While the application of the current test is subject to interpretation, the Board believes that it is not possible to specify with particularity by regulation the circumstances under which a creditor may—or may not—be liable for a violation committed by another creditor. Accordingly, Regulation B retains the ''reasonable notice'' standard for when a creditor may be responsible for the discriminatory acts of other creditors.

The Board believes that, depending on the circumstances, the ''reasonable notice'' standard may carry with it the need for a creditor to exercise some degree of diligence with respect to third-parties' involvement in credit transactions, such as brokers or the originators of loans. The Board also believes, however, that it is not feasible to specify by regulatory interpretation the degree of care that a court of law may find to be required in specific cases.

Comment 2(l)–2 would be revised to clarify the type of creditors subject only to the general prohibitions against discrimination and discouragement.

2(z) Prohibited Basis

A technical revision would be made to comment 2(z)–1 for clarity. Comment 2(z)–3 reflects the change in the name of the Aid to Families with Dependent Children program.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

A technical revision would be made to comment 3–1 for clarity.

Section 202.4—General Rule Prohibiting Discrimination

Substantial revisions are proposed in comments to § 202.4.

Former comment 4(a)–1 would be divided into two comments 4(a)–1 and 2. Additional examples of disparate treatment would be included in comment 4(a)–2. Proposed comments 4(b)–1 and 2 are existing comments 5(a)–1 and 2, respectively, with minor revisions. References to ''potential'' applicants in existing comment 5(a)–1, which is comment 4(b)–1 under the proposal, would be changed to ''prospective'' applicants with no substantive change intended. Proposed comments 4(c)–1, 2, and 3 are existing comments 5(e)–1, 2, and 3, respectively. Proposed comment 4(d)–1 is new and would clarify the clear and conspicuous requirement.

Section 202.5—Rules Concerning Taking of Applications

Substantial revisions are proposed in comments to § 202.5.

Comments 5(a)–1 and 2 would be moved to proposed comments 4(b)–1 and 2, respectively, consistent with proposed changes to the regulation. Comments 5(b)(2)–1, 2, and 3 would be removed, consistent with proposed changes to the regulation. Comments 5(d)(1)–1 and 5(d)(2)–1, 2, and 3 would be redesignated. Comments 5(e)–1, 2, and 3 would be removed and transferred to § 202.4(c) of the commentary.

Section 202.5a—Rules on Providing Appraisal Reports

No revisions are proposed in this section of the commentary.

Section 202.6—Rules Concerning Evaluation of Applications

Revisions are proposed in comments to §§ 202.6(b)(1), (b)(2), (b)(5), and (b)(8).

6(b)(1)

Comment 6(b)(1)–1 would be removed. The portion of the comment related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies would be moved to comment 6(b)(8)–1 in light of proposed changes to the regulation. Other portions of comment 6(b)(1)–1 related to evaluating married and unmarried applicants by the same standards would be moved to § 202.6(b)(8) of the regulation. Comment 6(b)(1)–2 would be renumbered.

6(b)(2)

Technical revisions would be made to comment 6(b)(2)–3 with no substantive change intended. Also, a technical amendment to comment 6(b)(2)–6 reflects the change in the name of the Aid to Families with Dependent Children program.

6(b)(5)

Comments 6(b)(5)–1 and 6(b)(5)–4 would be revised for further clarity and to remove references to ''protected income.'' No substantive change is intended.

6(b)(8)

The Board is proposing to add a new § 202.6(b)(8) to the regulation to clarify that a creditor may not evaluate married and unmarried applicants by different standards. New comment 6(b)(8)–1 would be added to incorporate part of the language from existing comment 6(b)(1)–1 related to the consideration of marital status for the purpose of ascertaining the creditor's rights and remedies.

Section 202.7—Rules Concerning Extensions of Credit

Revisions are proposed in comments to § 202.7(d)(1).

7(d) Signature of Spouse or Other Person

A new comment 7(d)(1)–1 would clarify that when an applicant is individually creditworthy, a creditor may not require the signature of any person besides the applicant on a credit instrument. Existing comment 7(d)(1)–1 would be redesignated as comment 7(d)(1)–2. Comment 7(d)(1)–3 would be added to provide guidance on how creditors may document that applicants have requested joint credit.

Section 202.8—Special Purpose Credit Programs

Minor revisions are proposed in comments to §§ 202.8(a), 202.8(c), and 202.8(d).

8(a) Standards for Programs

Comment 8(a)–5 would be revised to clarify how creditors can determine the need for a special-purpose credit program.

8(c) Special Rule Concerning Requests and Use of Information

Comments 8(c)–1 and 2 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

8(d) Special Rule in the Case of Financial Need

Comment 8(d)–1 would be revised to conform with the Board's proposal to remove the prohibition in Regulation B against the collection of certain information; no substantive change is intended.

Section 202.9—Notifications

Revisions are proposed in comments to §§ 202.9, 202.9(b)(2), and 202.9(g). Minor revisions would be made to comment 9–5 concerning prequalifications. Also, the discussion of preapprovals would be removed. Certain preapprovals are included in the proposed definition of ''application'' in § 202.2(f) of the regulation.

9(b) Form of ECOA Notice and Statement of Specific Reasons

9(b)(2)

Comment 9(b)(2)–7 would clarify the rules on providing reasons for adverse action in a combined credit scoring and judgmental system.

9(g) Applications Submitted Through a Third Party

Comment 9(g)–1 would be revised to clarify the information that must be included in an adverse action notice provided on behalf of more than one creditor, with minor revisions made for clarity.

Section 202.10—Furnishing of Credit Information

No revisions are proposed in comments to § 202.10.

Section 202.11—Relation to State Law

No revisions are proposed in comments to § 202.11.

Section 202.12—Record Retention

Revisions are proposed in comments to § 202.12(b), consistent with a proposed change to the regulation concerning retention of certain preapplication marketing information.

12(b)(7) Preapplication Marketing Information

Three new comments to proposed § 202.12(b)(7) would be added to clarify the record retention requirements for certain preapplication marketing information. (*See* detailed discussion in ''Part III. Discussion of Proposed Revisions to the Regulation'' under § 202.4.)

Section 202.13—Information for Monitoring Purposes

Revisions are proposed in comments to §§ 202.13(a) and (b).

13(a) Information To Be Requested

Comment 13(a)–7 would be removed, consistent with proposed revisions to the regulation.

13(b) Obtaining of Information

Comment 13(b)–4 would be revised to make the treatment of applications received electronically consistent with comment 203.4(a)(7)–5 of Regulation C (Home Mortgage Disclosure), 12 CFR part 203, for the purpose of collecting monitoring information.

Comment 13(b)–7 would be deleted to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Section 202.14—Enforcement, Penalties, and Liabilities

No revisions are proposed in comments to § 202.14.

Section 202.15—Incentives for self-testing and self-correction

Revisions are proposed in comments to § 202.15(b)(3).

15(b)(3)

As discussed earlier, the Board proposes to remove the prohibition in Regulation B against the notation of information about an applicant's race, national origin, religion, color, or sex in connection with nonmortgage credit products. The Board has received questions about whether the self-testing provisions of § 202.15 would apply to the voluntary collection of this information.

A self-test is defined as a program, practice, or study that is designed and used specifically to determine compliance with the ECOA and Regulation B, and creates data or factual information that is not available and cannot be derived from loan application files or other records related to credit transactions. If a self-test meets this definition, the results are privileged and cannot be obtained by a government agency in any examination or investigation, or by an agency or an applicant in any proceeding or civil action alleging a violation of Regulation B. The privilege may be lost or waived, however, under certain circumstances.

Creditors that elect to collect information about credit applicants' race or ethnicity, for example, will likely do so on the application form or in the application process. The Board believes that such collection of data in connection with nonmortgage credit, even though voluntary on the part of the creditor, is not a self-test privileged under the ECOA. The collection of information about an applicant's characteristics, standing alone or in combination with other information obtained or derived from loan application files or other records, does not qualify for the privilege. Comment 15(b)(3)(ii)–2 would be added to clarify this point.

Appendix B to Part 202—Model Application Forms

Comments 1 and 2 to Appendix B would be revised to reflect the Board's proposal to remove the prohibition in Regulation B against the collection of certain information.

Appendix C—Sample Notification Forms

No revisions are proposed in comments to Appendix C.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1008, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed revisions under the authority delegated to the Board by the Office of Management and Budget.

The collections of information that are proposed for revision by this rulemaking are found in 12 CFR Part 202. This information is mandatory to evidence compliance with the requirements of 15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a), and also to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondent/recordkeepers are for-profit financial institutions, including small businesses. Creditors are required to retain records for twelve to twenty-five months as evidence of compliance.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0201.

The current estimated total burden for this information collection is 123,892 hours; about 95 percent of this burden arises from disclosures to credit applicants, both consumers and businesses, and 5 percent arises from recordkeeping requirements. This amount reflects the burden estimate of the Federal Reserve System for the 988 state member banks under its supervision. This regulation applies to all types of creditors, not just state member banks. Under Paperwork Reduction Act regulations, however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden for the institutions they supervise.

It is believed that the paperwork burden will increase slightly due to the three proposed additions to the recordkeeping requirements: retaining certain information related to preapproved credit solicitations; keeping records associated with the proposal removing the general prohibition against obtaining information about characteristics of applicants for nonmortgage credit; and extending the retention period for most business credit applications from twelve to twenty-five months. In particular, the Federal Reserve solicits comment on (1) the incremental burden associated with retaining certain information on preapproved credit solicitations beyond the records creditors already retain under the FCRA or for business purposes, and (2) the number of institutions that will collect the proposed permissible information on characteristics of applicants for nonmortgage credit and the amount of burden this voluntary information collection will impose.

The Federal Reserve estimates that there will be no additional burden imposed by the requirement to disclose to credit applicants that providing applicant characteristic information is optional and that creditors will not take the information into account in any aspect of the credit transaction; the Federal Reserve has provided a proposed model notice to help alleviate the burden on creditors. The Federal Reserve also estimates that there will be no additional burden imposed by the requirement to notify businesses with gross revenues in excess of $1 million of their right to a written statement of reasons for adverse action.

Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. Any information collected by the respondents, however, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)). The adverse action disclosure is confidential between the institution and the consumer involved.

Comments are invited on: (a) whether the proposed revised collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed revised information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Chief, Financial Reports Section, Division of Research and Statistics, Mail

Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

VII. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 603) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis—a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are addressed in the supplementary material above.

Some provisions in the proposal should reduce burden. For example, creditors are not required to provide a notice of action taken for incidental credit. By broadening the definition of incidental credit to cover incidental business credit, fewer notices would be required.

The proposal to lift the prohibition against data notation for nonmortgage products should not impose any burden on institutions, because data notation would be voluntary. However, to the extent creditors collect this data, the proposal would require a disclosure to be given to applicants. This would impose a new requirement for creditors that request data. The Board has sought to minimize burden by proposing a model form.

Creditors would be required to retain certain records in connection with preapproved credit solicitations. This would impose a new requirement. However, the Board has sought to minimize burden by tracking existing legal requirements and current business practices. For example, users of consumer reports are required to retain some prescreening information under the Fair Credit Reporting Act. The proposal parallels this requirement. In addition, many lenders retain part or much of the solicitation information for business purposes, such as to evaluate marketing plans.

Creditors would be required to retain records for a longer period of time for certain types of business credit. Creditors would be required to retain records for 25 months rather than 12 months. This approach would track the record retention rules for consumer credit and could simplify compliance. Burden should be minimized in light of the variety of methods that could be used to retain these records.

In light of the purposes of the Equal Credit Opportunity Act, the Board believes it is not feasible to create different rules for large and small creditors; and therefore, except as discussed above, alternatives for small creditors are not provided. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Certain conventions have been used to highlight the proposed revisions to the text of the regulation and the staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Paragraphs are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, 12 CFR part 202 is proposed to be revised as follows:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

Regulation B (Equal Credit Opportunity)

Sec.
202.1 Authority, scope and purpose.
202.2 Definitions.
202.3 Limited exceptions for certain classes of transactions.
202.4 General **[**rule**]** ►rules◄ **[**prohibiting discrimination**]**.
202.5 Rules concerning **[**taking of applications**]** ►requests for information◄.
202.5a Rules on providing appraisal reports.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to state law.
202.12 Record retention.
202.13Information for monitoring purposes.
202.14 Enforcement, penalties and liabilities.
202.15 Incentives for self-testing and self-correction.

Appendix A to Part 202—Federal Enforcement Agencies

Appendix B to Part 202—Model Application Forms

Appendix C to Part 202—Sample Notification Forms

Appendix D to Part 202—Issuance of Staff Interpretations

Supplement I to Part 202—Official Staff Interpretations

Authority: 15 U.S.C. 1691–1691f.

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(l). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or **[**a substantial portion] ►substantially all◄ of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that [account] ►account◄;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or [a substantial portion] ►substantially all◄ of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures [established] ►used◄ by a creditor for the type of credit requested. ►The term includes a request for a preapproval under procedures in which a creditor will issue to creditworthy persons a written commitment for credit up to a specified amount that is valid for a designated period of time, even if the commitment is conditional.◄ The term ►application◄ does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in §§ 202.3(a), (b), and (d).

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in [the decision of whether or not to extend credit] ►a credit decision◄. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4►(a)◄ and ►(b)◄ [202.5(a)], the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems*—(1) A *credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system*, the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1)(i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term ''unmarried'' includes persons who are single, divorced, or widowed.

(v) *Negative factor or value,* in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness,* in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public-utilities credit*—(1) *Definition.* Public-utilities credit refers to extensions of credit that involve public-utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* [The following provisions of this regulation] ►Section 202.12(b) relating to record retention◄ [do]►does◄ not apply to public-utilities credit[:]►.◄

[(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.]

(b) *Securities credit*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

[(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;]

[(vi)]►(iii)◄ Section 202.7(b) relating to designation of name[, but only] to the extent necessary to [prevent violation of] ►comply with◄ rules regarding an account in which a broker or dealer has an interest, or rules [necessitating] ►regarding◄ the aggregation of accounts of spouses [for the purpose of determining] ►to determine◄ controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

[(v)]►(iv)◄ Section 202.7(c) relating to action concerning open-end accounts, [but only] to the extent the action taken is on the basis of a change of name or marital status;

[(vi)] ►(v)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and [(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

(c) *Incidental credit*[.]►—◄(1) *Definition.* Incidental credit refers to extensions of consumer ►and business◄ credit other than [credit of] the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4) ►for consumer credit, or not subject to interest charges or fees for business credit◄; and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section ►202.5(b)◄ [202.5(c)] concerning information about a spouse or former spouse;

(ii) Section ►202.5(c)(1)◄ [202.5(d)(1)] concerning information about marital status;

(iii) Section ►202.5(c)(2)◄ [202.5(d)(2)] concerning information about income derived from alimony, child support, or separate maintenance payments;

[(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;]

[(v)] ►(iv)◄ Section 202.7(d) relating to the signature of a spouse or other person;

[(vi)] ►(v)◄ Section 202.9 relating to notifications;

[(vii)] ►(vi)◄ Section 202.10 relating to furnishing of credit information; and

[(viii)] ►(vii)◄ Section 202.12(b) relating to record retention.

(d) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability* of regulation. Except for § 202.4►(a)◄, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General rule►s◄ [prohibiting discrimination].

►(a) *Discrimination.*◄ A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

►(b) *Discouragement.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(c) *Written applications.* A creditor shall take written applications for the dwelling-related types of credit covered by § 202.13(a).

(d) *Disclosures and other required information.* A creditor shall provide the disclosures and information required to be in writing by §§ 202.5, 202.5a, 202.9, and 202.13(c), in a clear and conspicuous manner and in a form the person may retain.◄

§ 202.5 Rules concerning [taking of applications] ►requests for information◄.

[(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.]

[(b)] ►(a)◄ *General rules concerning requests for information*[.]►—◄(1) Except as provided in paragraphs ►(b) and◄ (c) [and (d)] of this section, a creditor may request any information in connection with an application.[1]

(2) *Required collection of information.* Notwithstanding paragraphs ►(b) and◄ (c) [and (d)] of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the Act, this regulation, or other federal or state statute or regulation.

(3) *Special-purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in § 202.8►(b),◄ (c)►,◄ and (d).

►(4) *Obtaining information.* Except as otherwise permitted or required by law, a creditor shall not require an applicant to supply information about race, color, religion, national origin, or sex in connection with a credit transaction. A creditor that requests information on applicant characteristics shall disclose, orally or in writing, at the time the information is requested, that:

(i) Providing the information is optional; and

(ii) That the information (or the applicant's decision not to provide the information) will not be taken into account in any aspect of the credit transaction.◄

[(c)] ►(b)◄ Information about a spouse or former spouse[.] (1) Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph ►(b)(2)(v)◄ [(c)(2)(v)] of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account;

(ii) The spouse will be contractually liable on the account;

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;

(iv) The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account [upon] ►on◄ which the applicant is liable and to provide the name and address [in which] ►of the person in whose name◄ the account is [carried] ►held◄. A creditor may also ask ►an applicant to list◄ the names in which [an] ►the◄ applicant has previously received credit.

[(d)] ►(c)◄ *Other limitations on information requests*—(1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms *married, unmarried,* and *separated.* A creditor may explain that the category unmarried includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Sex.* [A creditor shall not inquire about the sex of an applicant.] An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

[(5) *Race, color, religion, national origin.* A creditor shall not inquire about the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire about an applicant's permanent residency and immigration status.]

►(5) *Permanent residency, immigration status.* A creditor may inquire about an applicant's permanent residency and immigration status in connection with a credit transaction.◄

[(e) *Written applications.* A creditor shall take written applications for the types of credit covered by § 202.13(a) but need not take written applications for other types of credit.]

§ 202.5a Rules on providing appraisal reports.

(a) *Providing appraisals.* A creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.

(1) *Routine delivery.* A creditor may routinely provide a copy of the appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request

[1] This paragraph does not limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be given at any time during the application process but no later than when the creditor provides notice of action taken under § 202.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of the appraisal report promptly (generally within 30 days) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 202.9 of this part or 90 days after the application is withdrawn.

(b) *Credit unions.* A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisals available is not subject to this section.

(c) *Definitions.* For purposes of paragraph (a) of this section, the term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. The term *appraisal report* means the document(s) relied upon by a creditor in evaluating the value of the dwelling.

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[2]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph (b)(2), a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

►(8) *Marital status.* Except as otherwise permitted or required by law, a creditor shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.

(9) *Race, color, religion, national origin, sex.* Except as otherwise permitted or required by law, a creditor shall not consider race, color, religion, national origin, or sex (or an applicant's decision not to provide the information) in any aspect of a credit transaction.◄

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the Act or this regulation.

§ 202.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change

[2] The legislative history of the Act indicates that the Congress intended an ''effects test'' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person*—(1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. ▶A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit.◀

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit-community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special purpose credit programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates [to meet special social needs], if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections***[.]**▶—◀(1) *General applicability.* All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2) *Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's marital status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by federal or state law.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action of an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(3) *Notification to business credit applicants.* For business credit, a creditor shall comply with the requirements of this paragraph in the following manner:

(i) With regard to a business that had gross revenues of $1,000,000 or less in its preceding fiscal year (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2), except that:

(A) The statement of the action taken may be given orally or in writing, when adverse action is taken;

(B) Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;

(C) For an application made solely by telephone, a creditor satisfies the requirements of this paragraph by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

(ii) With regard to a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

(A) ►Within a reasonable time of the action taken,◄ [Notify] ►notify◄ the applicant, orally or in writing, [within a reasonable time] of the action taken ►and of the applicant's right to a written statement of reasons◄; and

(B) Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the Act, the creditor shall provide a notice that is substantially similar to the following: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant►, joint applicant, or similar party◄ failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications*—(1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* The requirements of this section (including statements of specific reasons) are satisfied by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of credit information.

(a) *Designation of accounts.* A creditor that furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarantor, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to state law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the Act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the Act and this regulation and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the Act or this regulation;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this regulation;

(iv) Prohibits asking ►about◄ or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer ►a◄ [as] special purpose credit program as defined by § 202.8.

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is inconsistent with the requirements of the Act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and ►obtain◄ [obtained] individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions*—(1) *Applications.* A state may apply to the Board for an exemption from the requirements of the Act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the Act and this regulation or that applicants are afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil-liability provisions of section 706 or the administrative-enforcement provisions of section 704 of the Act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the Act and this regulation.

§ 202.12 Record retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the Act or this regulation in evaluating applications, without violating the Act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the Act and this regulation or other federal or state statutes or regulations.

(b) *Preservation of records*—(1) *Applications.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of action taken on an application or of incompleteness ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain in original form or a copy thereof:

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(2) *Existing accounts.* For 25 months [(12 months for business credit)] after the date that a creditor notifies an applicant of adverse action regarding an existing account ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this regulation.

(3) *Other applications.* For 25 months [(12 months for business credit)] after the date that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9 ►(except as provided in paragraph (b)(5) of this section)◄, the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information beyond 25 months [(12

months for business credit)】 ►(except as provided in paragraph (b)(5) of this section)◄ if [it] ►the creditor◄ has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the Act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the Act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(5) *Special rule for certain business credit applications.* With regard to a business with gross revenues in excess of $1,000,000 in its preceding fiscal year, or an extension of trade credit, credit incident to a factoring agreement or other similar types of business credit, the creditor shall retain records for at least 60 days after notifying the applicant of the action taken. If within that time period the applicant requests in writing the reasons for adverse action or that records be retained, the creditor shall retain records for 12 months.

(6) *Self-tests.* For 25 months after a self-test (as defined in § 202.15) has been completed, the creditor shall retain all written or recorded information about the self-test. A creditor shall retain information beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action. In such cases, the creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

►(7) *Preapplication marketing information.* For 25 months after the date that a creditor solicits potential customers for credit (12 months for business credit subject to paragraph (b)(5) of this section), the creditor shall retain in original form or a copy thereof:

(i) Any preapproved credit solicitation, the list of criteria the creditor used to select potential recipients of the solicitation, any correspondence (to and from the selected recipients) related to complaints about the solicitation; and

(ii) Any component of a marketing plan to which such solicitation relates.◄

§ 202.13 Information for monitoring purposes.

(a) *Information to be requested.* ►(1)◄ A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

【(1)】 ►i.◄ Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

【(2)】 ►ii.◄ Sex;

【(3)】 ►iii.◄ Marital status, using the categories married, unmarried, and separated; and

【(4)】 ►iv.◄ Age.

►(2)◄ *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining* 【of】 *information.* Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses not to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) ►of this section◄.

§ 202.14 Enforcement, penalties and liabilities.

(a) *Administrative enforcement*【.】 (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities*【.】 (1) Sections 706(a) and (b) and 702(g) of the Act provide that any creditor that fails to comply with a requirement imposed by the Act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704(b), (c), and (d) and 702(g) of the Act, violations of the Act or ►this regulation◄ 【regulations】 also constitute violations of other federal laws. Liability for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the Act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) If an agency responsible for administrative enforcement is unable to obtain compliance with the Act or this ►regulation◄ 【part】, it may refer the matter to the Attorney General of the United States. In addition, if the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration

has reason to believe that one or more creditors engaged in a pattern or practice of discouraging or denying applications in violation of the Act or this regulation, the agency shall refer the matter to the Attorney General. Furthermore, the agency may refer a matter to the Attorney General if the agency has reason to believe that one or more creditors violated section 701(a) of the Act.

(4) On referral, or whenever the Attorney General has reason to believe that one or more creditors engaged in a pattern or practice in violation of the Act or this ▶regulation◀ **[**part**]**, the Attorney General may bring a civil action for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

(5) If the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration has reason to believe (as a result of a consumer complaint, conducting a consumer compliance examination, or otherwise) that a violation of the Act or this regulation has occurred which is also a violation of the Fair Housing Act, and the matter is not referred to the Attorney General, the agency shall notify:

(i) The Secretary of Housing and Urban Development; and

(ii) The applicant that the Secretary of Housing and Urban Development has been notified and that remedies for the violation may be available under the Fair Housing Act.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. **[**If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not covered by § 202.13, the creditor may act on and retain the application without violating the regulation.**]**

§ 202.15 Incentives for self-testing and self-correction.

(a) *General rules*—(1) *Voluntary self-testing and correction.* The report or results of the self-test that a creditor voluntarily conducts (or authorizes) are privileged as provided in this section. Data collection required by law or by any governmental authority is not a voluntary self-test.

(2) *Corrective action required.* The privilege in this section applies only if the creditor has taken or is taking appropriate corrective action.

(3) *Other privileges.* The privilege created by this section does not preclude the assertion of any other privilege that may also apply.

(b) *Self-test defined*—(1) *Definition.* A self-test is any program, practice, or study that:

(i) Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the Act or this regulation; and

(ii) Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

(2) *Types of information privileged.* The privilege under this section applies to the report or results of the self-test, data or factual information created by the self-test, and any analysis, opinions, and conclusions pertaining to the self-test report or results. The privilege covers workpapers or draft documents as well as final documents.

(3) *Types of information not privileged.* The privilege under this section does not apply to:

(i) Information about whether a creditor conducted a self-test, the methodology used or the scope of the self-test, the time period covered by the self-test, or the dates it was conducted; or

(ii) Loan and application files or other business records related to credit transactions, and information derived from such files and records, even if it has been aggregated, summarized, or reorganized to facilitate analysis.

(c) *Appropriate corrective action*—(1) *General requirement.* For the privilege in this section to apply, appropriate corrective action is required when the self-test shows that it is more likely than not that a violation occurred, even though no violation has been formally adjudicated.

(2) *Determining the scope of appropriate corrective action.* A creditor must take corrective action that is reasonably likely to remedy the cause and effect of a likely violation by:

(i) Identifying the policies or practices that are the likely cause of the violation; and

(ii) Assessing the extent and scope of any violation.

(3) *Types of relief.* Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this section:

(i) A creditor is not required to provide remedial relief to a tester used in a self-test;

(ii) A creditor is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated; and

(iii) A creditor is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the creditor obtained the results of the self-test or the applicant is otherwise ineligible for such relief.

(4) *No admission of violation.* Taking corrective action is not an admission that a violation occurred.

(d)**[**(1)**]** *Scope of privilege***[**.**]**▶—(1) *Use of privileged self-test.*◀ The report or results of a privileged self-test may not be obtained or used:

(i) By a government agency in any examination or investigation relating to compliance with the Act or this regulation; or

(ii) By a government agency or an applicant (including a prospective applicant who alleges a violation of § ▶202.4(b)◀ **[**202.5(a)**]**) in any proceeding or civil action in which a violation of the Act or this regulation is alleged.

(2) *Loss of privilege.* The report or results of a self-test are not privileged under paragraph (d)(1) of this section if the creditor or a person with lawful access to the report or results:

(i) Voluntarily discloses any part of the report or results, or any other information privileged under this section, to an applicant or government agency or to the public;

(ii) Discloses any part of the report or results, or any other information privileged under this section, as a defense to charges that the creditor has violated the Act or regulation; or

(iii) Fails or is unable to produce written or recorded information about the self-test that is required to be retained under § 202.12(b)(6) when the information is needed to determine whether the privilege applies. This paragraph does not limit any other penalty or remedy that may be available for a violation of § 202.12.

(3) *Limited use of privileged information.* Notwithstanding paragraph (d)(1) of this section, the self-test report or results and any other information privileged under this section may be obtained and used by an applicant or government agency solely to determine a penalty or remedy after a violation of the Act or this regulation has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission was made. Information disclosed under this

paragraph (d)(3) remains privileged under paragraph (d)(1) of this section.

Appendix A to Part 202—Federal Enforcement Agencies

The following list indicates the federal agencies that enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

National Banks, and Federal Branches and Federal Agencies of Foreign Banks

Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Avenue, Suite 3710, Houston, Texas 77010.

State Member Banks, Branches and Agencies of Foreign Banks (other than federal branches, federal agencies, and insured state branches of foreign banks), Commercial Lending Companies Owned or Controlled by Foreign Banks, and Organizations Operating Under Section 25 or 25A of the Federal Reserve Act

Federal Reserve Bank serving the district in which the institution is located.

Nonmember Insured Banks and Insured State Branches of Foreign Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving►s◄ banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)

Office of Thrift Supervision Regional Director for the region in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Creditors Subject to ►Surface Transportation Board◄ [Interstate Commerce Commission]

Office of Proceedings, [Interstate Commerce Commission, Washington, DC 20523] ►Surface Transportation Board, Department of Transportation, 1925 K Street NW, Washington, DC 20423◄

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, ►409 Third Street, SW,◄ [1441 L Street, NW,] Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above

FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B to Part 202—Model Application Forms

►1.◄ This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions[. The appendix also] ►which◄ contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

►2.◄ The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

►3.◄ If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs ►(b) and◄ (c) [and (d)] of § 202.5 [of this regulation].

BILLING CODE 6210–01–P

[Open-end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.

☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.

☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ______ Birthdate: / /

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Previous Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ______ When? ______ Office: ______

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with you: ______ Telephone: ______

Relationship: ______ Address: ______

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ______ Birthdate: / /

Relationship to Applicant (if any): ______

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with Joint Applicant, User, or Other Party: ______ Telephone: ______

Relationship: ______ Address: ______

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Open-end, unsecured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed-end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.

☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets or another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested $ ________ Payment Date Desired ________ Proceeds of Credit To be Used For ________

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ________ Birthdate: / /

Present Street Address: ________ Years there: ________

City: ________ State: ________ Zip: ________ Telephone: ________

Social Security No.: ________ Driver's License No.: ________

Previous Street Address: ________ Years there: ________

City: ________ State: ________ Zip: ________

Present Employer: ________ Years there: ________ Telephone: ________

Position or title: ________ Name of supervisor: ________

Employer's Address: ________

Previous Employer: ________ Years there: ________

Previous Employer's Address: ________

Present net salary or commission: $ ________ per ________ No. Dependents: ________ Ages: ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ________ per ________ Source(s) of other income: ________

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ________ When? ________ Office: ________

Checking Account No.: ________ Institution and Branch: ________

Savings Account No.: ________ Institution and Branch: ________

Name of nearest relative not living with you: ________ Telephone: ________

Relationship: ________ Address: ________

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ________ Birthdate: / /

Relationship to Applicant (if any): ________

Present Street Address: ________ Years there: ________

City: ________ State: ________ Zip: ________ Telephone: ________

Social Security No.: ________ Driver's License No.: ________

Present Employer: ________ Years there: ________ Telephone: ________

Position or title: ________ Name of supervisor: ________

Employer's Address: ________

Previous Employer: ________ Years there: ________

Previous Employer's Address: ________

Present net salary or commission: $ ________ per ________ No. Dependents: ________ Ages: ________

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ________ per ________ Source(s) of other income: ________

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ________ Institution and Branch: ________

Savings Account No.: ________ Institution and Branch: ________

Name of nearest relative not living with Joint Applicant or Other Party: ________

Relationship: ________ Address: ________

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

[Closed-end, secured credit]

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Briefly describe the property to be given as security.)

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any): ____________________

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed-end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.

☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.

☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested $ ______ Payment Date Desired ______ Proceeds of Credit To be Used For ______

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ______ Birthdate: / /

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Previous Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ______ When? ______ Office: ______

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with you: ______ Telephone: ______

Relationship: ______ Address: ______

SECTION B—INFORMATION REGARDING JOINT APPLICANT, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ______ Birthdate: / /

Relationship to Applicant (if any): ______

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with Joint Applicant or Other Party: ______ Telephone: ______

Relationship: ______ Address: ______

[Closed-end, unsecured/secured credit]

SECTION C—MARITAL STATUS
(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any): ______

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested $ ______ Payment Date Desired ______ Proceeds of Credit To be Used For ______

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ______ Birthdate: / /

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Previous Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? ______ When? ______ Office: ______

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with you: ______ Telephone: ______

Relationship: ______ Address: ______

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ______ Birthdate: / /

Relationship to Applicant (if any): ______

Present Street Address: ______ Years there: ______

City: ______ State: ______ Zip: ______ Telephone: ______

Social Security No.: ______ Driver's License No.: ______

Present Employer: ______ Years there: ______ Telephone: ______

Position or title: ______ Name of supervisor: ______

Employer's Address: ______

Previous Employer: ______ Years there: ______

Previous Employer's Address: ______

Present net salary or commission: $ ______ per ______ No. Dependents: ______ Ages: ______

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ______ per ______ Source(s) of other income: ______

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: ______ Institution and Branch: ______

Savings Account No.: ______ Institution and Branch: ______

Name of nearest relative not living with Spouse, Joint Applicant, User, or Other Party: ______ Telephone: ______

Relationship: ______ Address: ______

[Community property]

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D— ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit rent)	$ (Omit rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References)		Date Paid
1.	$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes ☐	No ☐	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes ☐ No ☐	Amount $	If "yes" to whom owed?	
Have you been declared bankrupt in the last 14 years?	Yes ☐ No ☐	If "yes" where?		Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security.

and list names and addresses of all co-owners of the property:

Name	Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for: ☐ VA ☐ FHA ☐ Conventional ☐ FmHA ☐ Other:			Agency Case Number	Lender Case No.
Amount $	Interest Rate %	No. of Months	**Amortization Type:** ☐ Fixed Rate ☐ GPM	☐ Other (explain): ☐ ARM (type):

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, & ZIP)	No. of Units
Legal Description of Subject Property (attach description if necessary)	Year Built

Purpose of Loan ☐ Purchase ☐ Refinance ☐ Construction ☐ Construction-Permanent ☐ Other (explain):

Property will be: ☐ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.

Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a + b)
	$	$	$	$	$

Complete this line if this is a refinance loan.

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements ☐ made ☐ to be made
	$	$		Cost: $

Title will be held in what Name(s)	Manner in which Title will be held	Estate will be held in: ☐ Fee Simple ☐ Leasehold (show expiration date)
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)		

III. BORROWER INFORMATION

Borrower				Co-Borrower			
Borrower's Name (include Jr. or Sr. if applicable)				Co-Borrower's Name (include Jr. or Sr. if applicable)			
Social Security Number	Home Phone (incl. area code)	Age	Yrs. School	Social Security Number	Home Phone (incl. area code)	Age	Yrs. School
☐ Married ☐ Separated ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Co-Borrower) no. ages			☐ Married ☐ Separated ☐ Unmarried (include single, divorced, widowed)	Dependents (not listed by Borrower) no. ages		
Present Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.				Present Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.			

If residing at present address for less than two years, complete the following:

Borrower	Co-Borrower
Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.
Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.	Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ____ No. Yrs.

IV. EMPLOYMENT INFORMATION

Borrower		Co-Borrower	
Name & Address of Employer ☐ Self Employed	Yrs. on this job Yrs. employed in this line of work/profession	Name & Address of Employer ☐ Self Employed	Yrs. on this job Yrs. employed in this line of work/profession
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)

If employed in current position for less than two years or if currently employed in more than one position, complete the following:

Borrower		Co-Borrower	
Name & Address of Employer ☐ Self Employed	Dates (from - to) Monthly Income $	Name & Address of Employer ☐ Self Employed	Dates (from - to) Monthly Income $
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)
Name & Address of Employer ☐ Self Employed	Dates (from - to) Monthly Income $	Name & Address of Employer ☐ Self Employed	Dates (from - to) Monthly Income $
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION

Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income*	$	$	$	Rent	$	
Overtime				First Mortgage (P&I)		$
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		
Dividends/Interest				Real Estate Taxes		
Net Rental Income				Mortgage Insurance		
Other (before completing, see the notice in "describe other income," below)				Homeowner Assn. Dues		
				Other:		
Total	$	$	$	**Total**	$	$

* **Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.**

Describe Other Income ***Notice:*** **Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.**

B/C		Monthly Amount
		$

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-Borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise separate Statements and Schedules are required. If the Co-Borrower section was completed about a spouse, this Statement and supporting schedules must be completed about that spouse also.

Completed ☐ Jointly ☐ Not Jointly

ASSETS Description	Cash or Market Value
Cash deposit toward purchase held by:	$
List checking and savings accounts below	
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Name and address of Bank, S&L, or Credit Union	
Acct. no.	$
Stocks & Bonds (Company name/number & description)	$
Life insurance net cash value Face amount: $	$
Subtotal Liquid Assets	$
Real estate owned (enter market value from schedule of real estate owned)	$
Vested interest in retirement fund	$
Net worth of business(es) owned (attach financial statement)	$
Automobiles owned (make and year)	$
Other Assets (itemize)	$
Total Assets a.	$

Liabilities and Pledged Assets. List the creditor's name, address and account number for all outstanding debts, including automobile loans, revolving charge accounts, real estate loans, alimony, child support, stock pledges, etc. Use continuation sheet, if necessary. Indicate by (*) those liabilities which will be satisfied upon sale of real estate owned or upon refinancing of the subject property.

LIABILITIES	Monthly Payt. & Mos. Left to Pay	Unpaid Balance
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Name and address of Company Acct. no.	$ Payt./Mos.	$
Alimony/Child Support/Separate Maintenance Payments Owed to:	$	
Job Related Expense (child care, union dues, etc.)	$	
Total Monthly Payments	$	
Net Worth (a minus b) ➡ $	**Total Liabilities b.**	$

VI. ASSETS AND LIABILITIES (cont.)

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet.)

Property Address (enter S if sold, PS if pending sale or R if rental being held for income)		Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Insurance, Maintenance, Taxes & Misc.	Net Rental Income
			$	$	$	$	$	$
		Totals	$	$	$	$	$	$

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):

Alternate Name	Creditor Name	Account Number

VII. DETAILS OF TRANSACTION

a. Purchase price	$
b. Alterations, improvements, repairs	
c. Land (if acquired separately)	
d. Refinance (incl. debts to be paid off)	
e. Estimated prepaid items	
f. Estimated closing costs	
g. PMI, MIP, Funding Fee	
h. Discount (if Borrower will pay)	
i. Total costs (add items a through h)	
j. Subordinate financing	
k. Borrower's closing costs paid by Seller	
l. Other Credits (explain)	
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	
n. PMI, MIP, Funding Fee financed	
o. Loan amount (add m & n)	
p. Cash from/to Borrower (subtract j, k, l & o from i)	

VIII. DECLARATIONS

If you answer "yes" to any questions a through i, please use continuation sheet for explanation.	Borrower Yes	Borrower No	Co-Borrower Yes	Co-Borrower No
a. Are there any outstanding judgments against you?	☐	☐	☐	☐
b. Have you been declared bankrupt within the past 7 years?	☐	☐	☐	☐
c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?	☐	☐	☐	☐
d. Are you a party to a lawsuit?	☐	☐	☐	☐
e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of Lender, FHA or VA case number, if any, and reasons for the action.)	☐	☐	☐	☐
f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question.	☐	☐	☐	☐
g. Are you obligated to pay alimony, child support, or separate maintenance?	☐	☐	☐	☐
h. Is any part of the down payment borrowed?	☐	☐	☐	☐
i. Are you a co-maker or endorser on a note?	☐	☐	☐	☐
j. Are you a U.S. citizen?	☐	☐	☐	☐
k. Are you a permanent resident alien?	☐	☐	☐	☐
l. **Do you intend to occupy the property as your primary residence?** If "Yes," complete question m below.	☐	☐	☐	☐
m. Have you had an ownership interest in a property in the last three years?	☐	☐	☐	☐
(1) What type of property did you own—principal residence (PR), second home (SH), or investment property (IP)?				
(2) How did you hold title to the home—solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?				

IX. ACKNOWLEDGMENT AND AGREEMENT

The undersigned specifically acknowledge(s) and agree(s) that: (1) the loan requested by this application will be secured by a first mortgage or deed of trust on the property described herein; (2) the property will not be used for any illegal or prohibited purpose or use; (3) all statements made in this application are made for the purpose of obtaining the loan indicated herein; (4) occupation of the property will be as indicated above; (5) verification or reverification of any information contained in the application may be made at any time by the Lender, its agents, successors and assigns, either directly or through a credit reporting agency, from any source named in this application, and the original copy of this application will be retained by the Lender, even if the loan is not approved; (6) the Lender, its agents, successors and assigns will rely on the information contained in the application and I/we have a continuing obligation to amend and/or supplement the information provided in this application if any of the material facts which I/we have represented herein should change prior to closing; (7) in the event my/our payments on the loan indicated in this application become delinquent, the Lender, its agents, successors and assigns, may, in addition to all their other rights and remedies, report my/our name(s) and account information to a credit reporting agency; (8) ownership of the loan may be transferred to successor or assign of the Lender without notice to me and/or the administration of the loan account may be transferred to an agent, successor or assign of the Lender with prior notice to me; (9) the Lender, its agents, successors and assigns make no representations or warranties, express or implied, to the Borrower(s) regarding the property, the condition of the property, or the value of the property.

Certification: I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq. and liability for monetary damages to the Lender, its agents, successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Borrower's Signature	Date	Co-Borrower's Signature	Date
X		X	

X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling, in order to monitor the Lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this Lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the Lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER

☐ I do not wish to furnish this information

Race/National Origin: ☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) ____

Sex: ☐ Female ☐ Male

CO-BORROWER

☐ I do not wish to furnish this information

Race/National Origin: ☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander ☐ White, not of Hispanic Origin ☐ Black, not of Hispanic origin ☐ Hispanic ☐ Other (specify) ____

Sex: ☐ Female ☐ Male

To be Completed by Interviewer	Interviewer's Name (print or type)	Name and Address of Interviewer's Employer
This application was taken by: ☐ face-to-face interview	Interviewer's Signature Date	
☐ by mail		
☐ by telephone	Interviewer's Phone Number (incl. area code)	

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark **B** for Borrower or **C** for Co-Borrower.	Borrower:	Agency Case Number:
	Co-Borrower:	Lender Case Number:

I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date	Co-Borrower's Signature:	Date
X		X	

Appendix C to Part 202—Sample Notification Forms

►1.◄ This appendix contains nine sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a) (1) and (2)(i) [of this regulation]. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a) (1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. Forms C–7 and C–8 are intended for use in connection with applications for business credit under § 202.9(a)(3). Form C–9 is designed for use in notifying an applicant of the right to receive a copy of an appraisal under § 202.5a.

►2.◄ Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the 615(a) disclosure when adverse action is taken against a consumer based on information from a consumer reporting agency. A creditor must provide the 615(b) disclosure when adverse action is taken based on information from an outside source other than a consumer reporting agency. In addition, a creditor must provide the 615(b) disclosure if the creditor obtained information from an affiliate other than information in a consumer report or other than information concerning the affiliate's own transactions or experiences with the consumer. Creditors may comply with the disclosure requirements for adverse action based on information in a consumer report obtained from an affiliate by providing *either* the 615(a) or 615(b) disclosure.

►3.◄ The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if "inadequate down payment" or "no deposit relationship with us" are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

►4.◄ If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose "insufficient bank references," not "insufficient credit references." Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of residence" rather than "too short a period of residence."

►5.◄ A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C–1 through C–4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of Forms C–5 and C–6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. Proper use of Forms C–7 and C–8 will satisfy the requirements of §§ 202.9(a)(2) (i) and (ii), respectively, for applications for business credit. Proper use of Form C–9 will satisfy the requirements of § 202.5a of this part. ►Proper use of Form C–10 will satisfy the requirements of § 202.5(a)(4).◄

Form C–1—Sample Notice of Action Taken and Statement of Reasons

Statement of Credit Denial, Termination or Change

Date: ______________________________

Applicant's Name: ______________________

Applicant's Address: ____________________

Description of Account, Transaction, or Requested Credit:

____

Description of Action Taken:

____

____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

____Credit application incomplete
____Insufficient number of credit references provided
____Unacceptable type of credit references provided
____Unable to verify credit references
____Temporary or irregular employment
____Unable to verify employment
____Length of employment
____Income insufficient for amount of credit requested
____Excessive obligations in relation to income
____Unable to verify income
____Length of residence
____Temporary residence
____Unable to verify residence
____No credit file
____Limited credit experience
____Poor credit performance with us
____Delinquent past or present credit obligations with others
____Garnishment, attachment, foreclosure, repossession, collection action, or judgment
____Bankruptcy
____Value or type of collateral not sufficient
____Other, specify: ___________________

Part II—Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

____Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: ______________________________

Address: ____________________________

____

[Toll-free] Telephone number:

____________________ ____________________

____Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

____

If you have any questions regarding this notice, you should contact:

Creditor's name: ________________________

Creditor's address: ______________________

Creditor's telephone number: _____________

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–2—Sample Notice of Action Taken and Statement of Reasons

Date:

Dear Applicant: Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

____ is below our minimum requirement.
____ is insufficient to sustain payments on the amount of credit requested.
____ could not be verified.

Your Employment:

____ is not of sufficient length to qualify.
____ could not be verified.

Your Credit History:

____ of making payments on time was not satisfactory.
____ could not be verified.

Your Application:

____ lacks a sufficient number of credit references.
____ lacks acceptable types of credit references.
____ reveals that current obligations are excessive in relation to income.

Other: ________________________________

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–3—Sample Notice of Action Taken and Statement of Reasons (Credit Scoring)

Date:

Dear Applicant: Thank you for your recent application for ___________________ . We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this letter, you should contact us at:

Creditor's Name: ________________________
Address: ______________________________
____
Telephone: ____________________________

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–4—Sample Notice of Action Taken, Statement of Reasons and Counteroffer

Date:

Dear Applicant: Thank you for your application for ___________________ . We are unable to offer you credit on the terms that you requested for the following reason(s):

____

We can, however, offer you credit on the following terms: ________________________

____

If this offer is acceptable to you, please notify us within [amount of time] at the following address: ____________________________ .

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and [toll-free] telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age ►(provided the applicant has the capacity to enter into a binding contract)◄ because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in appendix A].

Sincerely,

Form C–5—Sample Disclosure of Right To Request Specific Reasons for Credit Denial

Date:

Dear Applicant: Thank you for applying to us for ___________________ .

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time. If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address [Toll-free]
Telephone number

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–6—Sample Notice of Incomplete Application and Request for Additional Information

Creditor's name
Address
Telephone number

Date:

Dear Applicant: Thank you for your application for credit. The following information is needed to make a decision on your application: ____________________

____

We need to receive this information by *(date)*. If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's Name
Creditor's address

Date:

Dear Applicant: Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

(Insert appropriate reason, such as►:◄
Value or type of collateral not sufficient►;◄
Lack of established earnings record►;◄
Slow or past due in trade or loan payments)

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–8—Sample Disclosure of Right To Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name
Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A].

Form C–9—Sample Disclosure of Right To Receive a Copy of an Appraisal

You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

[In your letter, give us the following information:]

►Form C–10—Sample Disclosure About Voluntary Data Notation

We are requesting the following information [to monitor our compliance with the federal Equal Credit Opportunity Act]. You are not required to provide this information. The law provides that a creditor may not discriminate based on this information, or based on whether or not you choose to provide it.◄

Appendix D to Part 202—Issuance of Staff Interpretations

►1.◄ *Official Staff Interpretations.* Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

►2.◄ *Requests for Issuance of Official Staff Interpretations.* A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

►3.◄ *Scope of Interpretations.* No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I to Part 202—Official Staff Interpretations

Following is an official staff interpretation of Regulation B ►(12 CFR part 202)◄ issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 *et seq.*).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the Act.

2. *Issuance of interpretations.* Under appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the **Federal Register**. Except in unusual circumstances, official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary.

4. *Footnotes.* Footnotes in the regulation have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to § 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii)–1.

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending) ►(12 CFR part 226)◄. Further, the definition of

creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the Act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

3. *Board.* The term *Board,* as used in this regulation, means the Board of Governors of the Federal Reserve System.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(i)

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

►2. *Counteroffer.* If an applicant responds to a credit solicitation by requesting a specific amount of credit and the creditor provides a different amount, the creditor's action is a counteroffer—even if the solicitation discloses that the consumer may not receive the amount of credit requested. An adverse action notice is required unless the applicant expressly accepts or uses the credit. For example, assume an applicant receives a credit card solicitation offering credit "up to $10,000," and responds by requesting $8,000 in a balance transfer to pay off an existing credit card account; and that the creditor sends a credit card and informs the applicant that a $5,000 balance transfer and an additional $500 of credit has been approved. An adverse action notice is required unless the applicant uses the credit card or expressly accepts the credit offered before the balance transfer occurs.◄

Paragraph 2(c)(1)(ii)

►1. *Termination or unfavorable change to substantially all of a class of the creditor's accounts.* If a creditor terminates or makes an unfavorable change to the terms of all but a small proportion of a class of accounts, the creditor need not give adverse action notices to customers affected by the termination or unfavorable change. Class of accounts is a broad category. For example, overdraft lines of credit or distinct credit card programs such as "secured" credit cards represent a class of accounts. But a category designated according to characteristics of customers, such as by their credit scores, is not a class of accounts.◄

[1.] ►2.◄ *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is adverse action for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 202.9.

[2.] ►3.◄ *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

►Paragraph 2(c)(2)(i)

1. *Express agreement.* If a creditor changes the terms of an account pursuant to an express agreement, the creditor need not give adverse action notices to customers affected by the change. An express agreement exists where the specific change and the specific circumstance under which the change will occur are stated in the agreement. For example, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer misses two consecutive payments, and the missed payments occur, an increase in the rate is not adverse action. However, if a credit card agreement provides that the rate on a consumer's credit card will be increased if the consumer's financial circumstances change or if the creditor deems itself "insecure," imposing a higher rate is adverse action subject to the notice requirements of § 202.9.◄

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse-action notice need not be given to the mortgagor or the transferee. (See comment 2(e)–1 for treatment of a purchaser who requests to assume the loan.)

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of ►or other action on◄ an account when the accountholder is currently in default or delinquent on that account. ►For example, if a credit agreement defines default to include the consumer's filing for bankruptcy, an adverse action notice is not required if the creditor terminates the consumer's account when the consumer files for bankruptcy.◄ Notification in accordance with § 202.9 of the regulation generally is required, however, if the creditor's action is based ►not on a current but◄ on a past delinquency or default on the account.

►3. *Performance on a different account.* If a creditor takes adverse action on an account because of the consumer's performance (such as poor payment history) on a different account, an adverse action notice is required—even if the performance is defined as a default under the terms of the credit agreement.◄

Paragraph 2(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

[•]►i.◄ A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.

[•]►ii.◄ The amount of a transaction exceeds a cash advance or credit limit.

[•]►iii.◄ The circumstances (such as excessive use of a credit card in a short period of time) ►suggest◄ [suggests] that fraud is involved.

[•]►iv.◄ The authorization facilities are not functioning.

[•]►v.◄ Billing statements have been returned to the creditor for lack of a forwarding address.

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *Procedures established.* The term refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit ►decisions◄ [decision] based on oral requests, the creditor's established procedures are to accept both oral and written applications.

3. *When an inquiry* ►or prequalification request◄ becomes an application. A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry ►or prequalification request◄ as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry ►or prequalification request◄ becomes an application depends on how the creditor responds to the applicant, not on what the ►applicant◄ [applicant] says or asks.

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

[•]►i.◄ When a consumer calls to ►ask◄ [asks] about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ▶ratio◀ [ratio], and debt-to-income ratio.

[•]▶ii.◀ When a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and ▶sales◀ [sale] price of the car and the amount of the ▶downpayment◀ [down-payment], then ▶gives◀ [given] the consumer the rate.

[•]▶iii.◀ When a consumer asks about terms for a loan to purchase ▶a◀ home and tells the loan officer her income and intended ▶downpayment◀ [down-payment], but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

[•]▶iv.◀ When a consumer calls to ask about terms for a loan to purchase vacant land and states his income and the ▶sales◀ [sale] price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explaining that he would need to look at all of the ▶consumer's◀ [applicant's] qualifications before making a decision, and offering to send an application form to the consumer.

▶5. *Examples of an application.* i. An application for credit includes the case in which a person asks a financial institution to ''preapprove'' her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution evaluates her creditworthiness and issues a letter documenting that she has been preapproved (subject to, for example, adequate collateral value, a contract for sale, and lack of material change in the person's financial circumstances) and stating that the loan offer is valid, say, for 30 days.

ii. Under the same facts as above, if the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval, an adverse action notice must be provided.

iii. If the creditor's procedures do not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.◀

[5]▶6.◀ *Completed application—diligence requirement.* The regulation defines a completed application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

2(g) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). For purposes of Regulation B▶,◀ a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term *creditor* includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term *creditor* includes persons such as real estate brokers▶, automobile dealers, home builders, and home-improvement contractors◀ who do not participate in credit decisions but who [regularly] ▶solely accept applications,◀ refer applicants to creditors▶,◀ or [who] select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4▶(a)◀, the general rule prohibiting discrimination, and with § [202.5(a),]▶202.4(b), the general rule against◀ [on] discouraging applications.

2(p) *Empirically derived and other credit scoring systems.*

1. *Purpose of definition.* The definition under § 202.2(p)(l)▶(i)◀ through (iv) sets the criteria that a credit system must meet in order for the system to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a ''pertinent element of creditworthiness.'' (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system must be revalidated frequently enough to ▶ensure◀ [assure] that it continues to meet recognized professional statistical standards. To ensure that predictive ability is being maintained, creditors must periodically review the performance of the system. This could be done, for example, by analyzing the loan portfolio to determine the delinquency rate for each score interval, or by analyzing population stability over time to detect deviations of recent applications from the applicant population used to validate the system. If this analysis indicates that the system no longer predicts risk with statistical soundness, the system must be adjusted as necessary to reestablish its predictive ability. A creditor is responsible for ensuring its system is validated and revalidated based on the creditor's own data when it becomes available.

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1)(i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

2(w) *Open-end credit.*

1. *Open-end real estate mortgages.* The term *open-end credit* does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) *Prohibited basis.*

1. *Persons associated with applicant. Prohibited basis* as used in this regulation refers not only to characteristics—the race, color, religion, national origin, sex, marital status, or age—of an applicant (or officers of an applicant in the case of a corporation) but also to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4▶(a)◀, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is *public assistance* for purposes of the regulation. The term includes (but is not limited to) [Aid to Families with Dependent Children]▶Temporary Aid to Needy Families◀, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4►(a)◄, barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public*►-◄ utilities credit.

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation.

3. *Telephone companies.* A telephone company's credit transactions qualify for the exceptions provided in § 202.3(a)(2) only if the company is regulated by a government unit or files the charges for service, delayed payment, or any discount for prompt payment with a government unit.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

Section 202.4—General Rule►*s*◄ *[Prohibiting Discrimination]*

►Paragraph 4(a)◄

1. *Scope of [section]* ►rule◄. The general rule stated in § 202.4►(a)◄ covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the Act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule. Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate.

►2. *Examples. i.*◄ Disparate treatment would be found, for example,

►A. Where a creditor provides information only on "subprime" and similar products to minority applicants who request information about the creditor's mortgage products, but provides information on a wider variety of mortgage products to similarly situated nonminority applicants.

B. Where a creditor provides more comprehensive information to men than to similarly situated women.

C.◄ [where] ►Where◄ a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant.

►D.◄ [Disparate treatment also would be found where] ►Where◄ a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant.

►ii.◄ Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

►Paragraph 4(b)

1. *Prospective applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis—§ 202.4(b) covers acts or practices directed at prospective applicants that could discourage a reasonable person, on a prohibited basis, from applying for credit. Practices prohibited by this section include:

i. A statement that the applicant should not bother to apply, after the applicant states that he is retired.

ii. The use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the act.

iii. The use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

Paragraph 4(c)

1. *Requirement for written applications.* Model application forms are provided in appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b), *Applications through electronic media* and *Applications through video.)*

Paragraph 4(d)

1. *Clear and conspicuous.* This standard requires that disclosures be presented in a reasonably understandable format in a way that does not obscure the required information. No minimum type size is mandated, but the disclosures must be legible, whether typewritten, handwritten, or printed by computer.◄

Section 202.5—Rules Concerning [Taking Applications] ►*Information Requests*◄

[5(a) Discouraging applications.

1. *Potential applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants. Practices prohibited by this section include:

- A statement that the applicant should not bother to apply, after the applicant states that he is retired.
- Use of words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the act.
- Use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.]

[5(b)] ►5(a)◄ General rules concerning requests for information.

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

[Paragraph 5(b)(2)

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some types of loans not covered by § 202.13. Certain creditors with assets under $30 million, though covered by HMDA, are not required to collect and report these data; but they may do so at their option under HMDA, without violating the ECOA or Regulation B.

3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from

collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another federal or state statute or regulation requiring data collection.]

[5(d)] ►5(c)◄ *Other limitations on information requests.*

Paragraph [5(d)(1)] ►5(c)(1)◄

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

[•]►i.◄ The applicant's obligation to pay alimony, child support, or separate maintenance.

[•]►ii.◄ The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.

[•]►iii.◄ Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.

[•]►iv.◄ The ownership of assets, which could disclose the interest of a spouse.

Paragraph [5(d)(2)] ►5(c)(2)◄

1. *Disclosure about income.* The sample application forms in appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support, or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

[5(e) Written applications.

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to section 202.13(b), *Applications through electronic media and Applications through video.*)α

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) *Providing appraisals.*

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

5a(a)(2)(i) Notice.

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

5a(a)(2)(ii) Delivery.

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

5a(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value.

ii. A document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e ►*et seq.*◄ [*et seq.*]), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94–589, pp. 4–5; and in the House Report that accompanied H.R. 6516, No. 94–210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

[1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral. Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

2] ►1◄. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older. A credit program that offers more favorable credit terms to applicants age 62 or older is also permissible; a program that offers more favorable credit terms to applicants at an age lower than 62 is permissible only if it meets the special-purpose credit requirements of § 202.8.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is ''demonstrably and statistically sound,'' as defined in § 202.2(p), with one limitation: applicants ►age◄ 62 years or older must be treated at least as favorably as applicants who are under ►age◄ 62. If age is scored by assigning points to an applicant's age category, elderly applicants must receive the same or a greater number of points as the most favored class of nonelderly applicants.

i. *Age-split scorecards.* A creditor may segment the population into scorecards based on the age of an applicant. In such a system, one card covers a narrow age range (for example, applicants in their twenties or younger) who are evaluated under attributes predictive for that age group. A second card covers all other applicants who are evaluated under the attributes predictive for that broad class. When a system uses a card covering a wide age range that encompasses elderly applicants, the credit scoring system does not score age. Thus, the system does not raise the issue of assigning a negative factor or value to the age of elderly applicants. But if a system segments the population by age into multiple scorecards, and includes elderly applicants in a narrower age range, the credit scoring system does score age. To comply with the act and regulation in such a case, the creditor must ensure that the system does not assign a negative factor or value to the age of elderly applicants as a class.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not ►decide whether or not to extend credit or set the terms and conditions of credit based on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant.◄ [take age directly into account in any aspect of the credit transaction.] For example, [the] ►a◄ creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. [For example:] ►As the following examples illustrate, the evaluation must be made in an individualized, case-by-case manner:◄

[•]►i.◄ A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.

[•]►ii.◄ A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)

[•]►iii.◄ A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-term residence).

[As the examples above illustrate, the evaluation must be made in an individualized, case-by-case manner; and it is impermissible for a creditor, in deciding whether to extend credit or in setting the terms and conditions, to base its decision on age or information related exclusively to age. Age or age-related information may be considered only in evaluating other ''pertinent elements of creditworthiness'' that are drawn from the particular facts and circumstances concerning the applicant.]

4. *Consideration of age in a reverse mortgage.* A reverse mortgage is a home-secured loan in which the borrower receives payments from the creditor, and does not become obligated to repay these amounts (other than in the case of default) until the borrower dies, moves permanently from the home►,◄ or transfers title to the home, or upon a specified maturity date. Disbursements to the borrower under a reverse mortgage typically are determined by considering the value of the borrower's home, the current interest rate, and the borrower's life expectancy. A reverse mortgage program that requires borrowers to be age 62 or older is permissible under § 202.6(b)(2)(iv). In addition, under § 202.6(b)(2)(iii), a creditor may consider a borrower's age to evaluate a pertinent element of creditworthiness, such as the amount of the credit or monthly payments that the borrower will receive, or the estimated repayment date.

5. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as ''empirically derived'' under § 202.2(p) may consider other factors (such as ►a◄ credit report or the applicant's cash flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as ''demonstrably and statistically sound.'' While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a ''pertinent element of creditworthiness.'' (See comment 6(b)(2)–3.)

6. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

[•]►i.◄ The length of time an applicant will likely remain eligible to receive such income.

[•]►ii.◄ Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (such as [Aid to Families with Dependent Children] ►Temporary Aid to Needy Families◄ or Social Security payments to a minor).

[•]►iii.◄ Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance [(all referred to as ''protected income'')] on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.* ►i.◄ A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

[•]►A.◄ A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.

[•]►B.◄ A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that is not reliable before aggregating it with reliable income.

[•]►C.◄ A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

►ii.◄ In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a

primary source. [However, the] ▶The◀ creditor ▶, however,◀ may not score or otherwise take into account the number of sources for [protected] income[—for example,] ▶such as◀ retirement income, Social Security, ▶Supplemental Security Income, and◀ alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from ▶, for example,◀ a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* Under the regulation▶,◀ a denial of credit on the ground that an applicant is not a United States citizen is not per se discrimination based on national origin.

▶Paragraph 6(b)(8)

1. *Prohibited basis—marital status.* A creditor may consider an applicant's or joint applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.◀

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a nonspouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for ▶rules◀ [rule] governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

[•]▶i.◀ Repudiate responsibility for future charges on the joint account.

[•]▶ii.◀ Request separate accounts in their own names.

[•]▶iii.◀ Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if [(1)] the credit was based on the qualifications of a person who is no longer available to support the credit and [(2)] the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules ▶ensure◀ [assure] that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1)

▶1. *Signature of another person.* It is impermissible for a creditor to require an applicant who is individually creditworthy to provide a cosigner—even if the creditor applies the requirement without regard to sex, marital status, or any other prohibited basis.◀

[1.] ▶2.◀ *Joint applicant.* The term *joint applicant* refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

▶3. *Evidence of joint application.* A creditor must document in some manner a person's intent to become jointly liable for a credit extension. For example, the creditor may provide a check box on an application or on a financial statement for indicating whether two individuals intend to apply for joint credit; or a place for a signature or initials for affirming their intent to apply for joint credit. The method provided must be distinct from the means used by an individual to affirm the accuracy of information submitted on a financial statement, for example.◀

Paragraph 7(d)(2)

1. *Jointly owned property.* If an applicant requests unsecured credit, does not own sufficient separate property, and relies on joint property to establish creditworthiness, the creditor must value the applicant's interest in the jointly owned property. A creditor may not request that a nonapplicant joint owner sign any instrument as a condition of the credit extension unless the applicant's interest does not support the amount and terms of the credit sought.

i. *Valuation of applicant's interest.* In determining the value of an applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition; the value of the applicant's interest after such action; and the cost associated with the action. This determination must be based on the form of ownership prior to or at consummation, and not on the possibility of a subsequent change. For example, in determining whether a married applicant's interest in jointly owned property is sufficient to satisfy the creditor's standards of creditworthiness for individual credit, a creditor may not consider that the applicant's separate property may be transferred into tenancy by the entirety after consummation. Similarly, a creditor may not consider the possibility that the couple may divorce. Accordingly, a creditor may not require the signature of the nonapplicant spouse in these or similar circumstances.

ii. *Other options to support credit.* If the applicant's interest in jointly owned property does not support the amount and terms of credit sought, the creditor may offer the applicant other options to provide additional support for the extension of credit. For example:

A. Requesting an additional party (see § 202.7(d)(5));

B. Offering to grant the applicant's request on a secured basis (see § 202.7(d)(4)); or

C. Asking for the signature of the joint owner on an instrument that ensures access to the property in the event of the applicant's death or default, but does not impose personal liability unless necessary under state law (e.g., a limited guarantee). A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to ensure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

1. *Qualifications of additional parties.* In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Reliance on income of another person—individual credit.* An applicant who requests individual credit relying on the income of another person (including a spouse in a non-community property state) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature of a spouse may be required if the applicant relies on the spouse's separate income. If the applicant relies on the spouse's future earnings that as a matter of state law cannot be characterized as community property until earned, the creditor may require the spouse's signature, but need not do so—even if it is the creditor's practice to require the signature when an applicant relies on the future earnings of a person other than a spouse. (See § 202.6(c) on consideration of state property laws.)

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor's relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only from the married officers of a business or married shareholders of a closely held corporation.

2. *Spousal guarantees.* The rules in § 202.7(d) bar a creditor from requiring a signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, although a creditor may require all officers of a closely held corporation to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign the guarantee. If an evaluation of the financial circumstances of an officer indicates that an additional signature is necessary, however, the creditor may require the signature of a spouse in appropriate circumstances in accordance with § 202.7(d)(2).

7(e) *Insurance.*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an ''economically disadvantaged class of persons.'' The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state, or local statute, regulation or ordinance, or by judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

5. *Determining need.* In designing a special purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources, including governmental reports and studies. For example, ►a creditor might design new products to reach consumers who would not meet, or have not met, its traditional standards of creditworthiness due to such factors as credit inexperience or the use of credit sources that may not report to consumer reporting agencies. Or,◄ a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers. ’

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

8(b) *Rules* [is] ►in◄ other sections.

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action [taker] ►taken◄ as required by § 202.9.

8(c) *Special rule concerning requests and use of information.*

1. *Request of prohibited* ►basis◄ *information.* This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5

and 202.6] to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider [information related to] ►a◄ prohibited basis are:

[•]►i.◄ Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.

[•]►ii.◄ Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) *Special rule in the case of financial need.*

1. *Request of prohibited* ►basis◄ information. This section permits a creditor to request and consider [certain] information ►such as race or national origin◄ [that would otherwise be prohibited by §§ 202.5 and 202.6], and to require signatures that would otherwise be prohibited by § 202.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

[•] ►i.◄ Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.

[•] ►ii.◄ Student loan programs based on the family's financial need, for which a creditor may have to consider the spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See § 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term adverse action.* The regulation does not require that a creditor use the term *adverse* ►*action*◄ in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must, however, comply with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

5. *Prequalification* ►requests◄ [and preapproval programs]. Whether a creditor must provide a notice of action taken for a prequalification [or preapproval] request depends on the creditor's response to the request, as discussed in [the commentary to section 202.2(f)] ►comment 2(f)–3◄. For instance, a creditor may treat the request as an inquiry if the creditor [provides general information such as loan terms and] ►evaluates specific information about the consumer and tells the consumer◄ the maximum amount [a consumer] ►she◄ could borrow under various loan programs, explaining the process [the consumer] ►she◄ must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing ►the◄ [a] request for prequalification, ►the◄ [a] creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in ►her◄ [the consumer's] record, the creditor has denied an application for credit.

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment [2(f)–5] ►2(f)–6◄.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for incompleteness.* When an application is incomplete regarding matters that the applicant can complete and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete. The creditor has the option, alternatively, of providing a notice of incompleteness under § 202.9(c).

4. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application and notify the applicant under this section as appropriate. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance the incompleteness of the application cannot be given as the reason for the denial.

5. *Length of counteroffer.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

6. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of Appendix C to the regulation.

7. *Denial of a telephone application.* When an application is conveyed by means of telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

Paragraph 9(a)(3)

1. *Coverage.* In determining the rules in this paragraph that apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules in the paragraph govern the application. However, if an applicant applies for business purpose credit as an individual, the rules in paragraph 9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term *trade credit* generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 202.9(a)(3)(ii) apply, as do other relevant sections of the Act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the Act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice in accordance with § 202.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 202.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.

9(b) *Form of ECOA notice and statement* ►of◄ specific reasons.

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other

adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under §§ 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say ''length of residence'' rather than ''too short a period of residence.''

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component. ►If the application is not approved or denied as a result of the credit scoring, and the creditor performs a judgmental assessment and denies the credit after that assessment, the reasons disclosed must come from both components of the system. The same result applies where a judgmental assessment is the first component of the combined system. As provided in comment 9(b)(2)–1, disclosure of more than a combined total of four reasons is not likely to be helpful to the applicant.◄

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act ►(FCRA)◄ requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's ►delinquent◄ [delinguent] credit obligations. To satisfy the FCRA requirement, the [credit] ►creditor◄ must also disclose that a credit report was obtained and used to deny credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in §§ 202.9(c)(1) and (c)(2). If the applicant does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted[.]►, or by a noncreditor third party.◄ [Alternatively, the third party may be a noncreditor.] ►If one notification is provided on behalf of multiple creditors, the notice must contain the name and address of each creditor. The notice must either disclose the applicant's right to a statement of specific reasons within 30 days, or give the primary reasons each creditor relied upon in taking the adverse action—clearly indicating which reasons relate to which creditor.◄

2. *Third-party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.11►—◄Relation to State Law

11(a) *Inconsistent state laws.*

1. *Preemption determination—New York.* Effective November 11, 1988, the Board has determined that the following provisions in the state law of New York are preempted by the federal law:

[•] ►i.◄ Article 15, section 296a(1)(b)—Unlawful discriminatory practices in relation to credit on the basis of race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars taking a prohibited basis into account when establishing eligibility for certain special-purpose credit programs.

[•] ►ii.◄ Article 15, section 296a(1)(c)—Unlawful discriminatory practice to make any record or inquiry based on race, creed, color, national origin, age, sex, marital status, or disability. This provision is preempted to the extent that it bars a creditor from requesting and considering information regarding the particular characteristics (for example, race, national origin, or sex) required for eligibility for special-purpose credit programs.

2. *Preemption determination—Ohio.* Effective July 23, 1990, the Board has determined that the following provision in the state law of Ohio is preempted by the federal law:

[•] ►i.◄ Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system need not keep a written copy of a document (for example, an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

[•]►i.◄ An application is withdrawn by the applicant.

[•]►ii.◄ An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

12(b)(6) *Self-tests*

1. The rule requires all written or recorded information about a self-test to be retained for 25 months after a self-test has been completed. For this purpose, a self-test is completed after the creditor has obtained the results and made a determination about what corrective action, if any, is appropriate. Creditors are required to retain information about the scope of the self-test, the methodology used and time period covered by the self-test, the report or results of the self-test including any analysis or conclusions, and any corrective action taken in response to the self-test.

►12(b)(7) *Preapplication marketing information.*

1. *Preapproved credit solicitations.* The rule requires creditors to retain copies of preapproved credit solicitations. For purposes of this regulation, a preapproved credit solicitation is an ''offer of credit'' as described in 15 U.S.C. 1681a(l) of the Fair Credit Reporting Act. A creditor complies with this rule if it retains a copy of each solicitation mailing that contains different terms, such as the amount of credit offered, annual percentage rate, annual fee, etc.

2. *List of criteria.* A creditor must retain the list of criteria used to select potential recipients. This includes the criteria used by the creditor both to determine the potential recipients of the particular solicitation, as identified by the consumer reporting agency, and to determine who will actually be offered credit.

3. *Marketing plan.* The marketing plan to which the solicitation relates refers to any written plan, including any response model, that describes the creditor's goals pertaining to the particular solicitation. Thus, if a creditor sends preapproved credit solicitations to women business owners as part of its goal to increase lending to those persons, the creditor complies with [this rule]►§ 202.12(b)(7)◄ by retaining that part of the plan designed to accomplish this goal.◄

Section 202.13—Information for Monitoring ►Purposes◄ [purposes]

13(a) *Information to be requested.*

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to ►the◄ information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

[7. *Data collection under Regulation C.* See comment 5(b)(2)–2.]

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* ►i.◄ If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

【•】 ►A.◄When a creditor accepts an application by telephone, it does not have to request the monitoring information.

【•】 ►B.◄When a creditor accepts an application by mail, it does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

►ii.◄If it is not evident on the face of the application that it was received by mail or telephone, the creditor should indicate on the form or other application record how the application was received.

4. *Applications through electronic media.* If an applicant applies through an electronic medium (for example, the Internet or a facsimile) without video capability that allows the creditor to see the applicant, the creditor 【may treat】 ►treats◄ the application as if it were received by mail 【or telephone】.

5. *Applications through video.* If a creditor takes an application through a medium that allows the creditor to see the applicant, the creditor treats the application as taken in person and must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

6. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C ►(12 CFR part 203)◄ which generally requires creditors to report, among other things, the sex and race or national origin of an applicant on brokered applications or applications received through a correspondent.

【7. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.】

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to that required by this section.

Section 202.14—Enforcement, ►*Penalties, and Liabilities*◄ 【*penalties, and liabilities*】

14(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively only.

Section 202.15—Incentives for Self-testing and Self-correction

【*15(a) General Rules*】 ►15(a) General rules◄

【*15(a)(1) Voluntary Self-Testing and Correction*】 ►15(a)(1) *Voluntary self-testing and correction*◄

1. Activities required by any governmental authority are not voluntary self-tests. A governmental authority includes both administrative and judicial authorities for federal, state, and local governments.

【15*(a)(2) Corrective Action Required*α ►15*(a)(2) Corrective action required*◄

1. To qualify for the privilege, appropriate corrective action is required when the results of a self-test show that it is more likely than not that there has been a violation of the ECOA or this regulation. A self-test is also privileged when it identifies no violations.

2. In some cases, the issue of whether certain information is privileged may arise before the self-test is complete or corrective actions are fully under way. This would not necessarily prevent a creditor from asserting the privilege. In situations where the self-test is not complete, for the privilege to apply the lender must satisfy the regulation's requirements within a reasonable period of time. To assert the privilege where the self-test shows a likely violation, the rule requires, at a minimum, that the creditor establish a plan for corrective action and a method to demonstrate progress in implementing the plan. Creditors must take appropriate corrective action on a timely basis after the results of the self-test are known.

3. A creditor's determination about the type of corrective action needed, or a finding that no corrective action is required, is not conclusive in determining whether the requirements of this paragraph have been satisfied. If a creditor's claim of privilege is challenged, an assessment of the need for corrective action or the type of corrective action that is appropriate must be based on a review of the self-testing results, which may require an *in camera* inspection of the privileged documents.

【*15(a)(3) Other privileges*】 ►15(a)(3) *Other privileges*◄

1. A creditor may assert the privilege established under this section in addition to asserting any other privilege that may apply, such as the attorney-client privilege or the work►-◄product privilege. Self-testing data may still be privileged under this section, whether or not the creditor's assertion of another privilege is upheld.

【*15(b) Self-test Defined*】 ►15(b) *Self-test defined*◄

【*15(b)(1) Definition*】 ►15(b)(1) *Definition*◄

【*Paragraph 15(b)(1)(i)*α ►Paragraph 15(b)(1)(i)◄

1. To qualify for the privilege, a self-test must be sufficient to constitute a determination of the extent or effectiveness of the creditor's compliance with the Act and Regulation B. Accordingly, a self-test is only privileged if it was designed and used for that purpose. A self-test that is designed or used to determine compliance with other laws or regulations or for other purposes is not privileged under this rule. For example, a self-test designed to evaluate employee efficiency or customers' satisfaction with the level of service provided by the creditor is not privileged even if evidence of discrimination is uncovered incidentally. If a self-test is designed for multiple purposes, only the portion designed to determine compliance with the ECOA is eligible for the privilege.

【*Paragraph 15(b)(1)(ii)*】 ►Paragraph 15(b)(1)(ii)◄

1. The principal attribute of self-testing is that it constitutes a voluntary undertaking by the creditor to produce new data or factual information that otherwise would not be available and could not be derived from loan or application files or other records related to credit transactions. Self-testing includes, but is not limited to, the practice of using fictitious applicants for credit (testers), either with or without the use of matched pairs. A creditor may elect to test a defined segment of its business, for example, loan applications processed by a specific branch or loan officer, or applications made for a particular type of credit or loan program. A creditor also may use other methods of generating information that is not available in loan and application files, such as surveying mortgage loan applicants. To the extent permitted by law, creditors might also develop new methods that go beyond traditional pre-application testing, such as hiring testers to submit fictitious loan applications for processing.

2. The privilege does not protect a creditor's analysis performed as part of processing or underwriting a credit application. A creditor's evaluation or analysis of its loan files, Home Mortgage Disclosure Act data, or similar types of records (such as broker or loan officer compensation records) does not produce new information about a creditor's compliance and is not a self-test for purposes of this section. Similarly, a statistical analysis of data derived from existing loan files is not privileged.

【*15(b)(3) Types of Information Not Privileged*】 ►15(b)(3) *Types of information not privileged*◄

【*Paragraph 15(b)(3)(i)*】 ►Paragraph 15(b)(3)(i)◄

1. The information listed in this paragraph is not privileged and may be used to determine whether the prerequisites for the privilege have been satisfied. Accordingly, a creditor might be asked to identify the self-testing method, for example, whether pre-application testers were used or data were compiled by surveying loan applicants. Information about the scope of the self-test (such as the types of credit transactions examined, or the geographic area covered by the test) also is not privileged.

【*Paragraph 15(b)(3)(ii)*】 ►Paragraph 15(b)(3)(ii)◄

1. Property appraisal reports, minutes of loan committee meetings or other documents reflecting the basis for a decision to approve or deny an application, loan policies or procedures, underwriting standards, and broker compensation records are examples of the types of records that are not privileged. If a creditor arranges for testers to submit loan applications for processing, the records are not related to actual credit transactions for purposes of this paragraph and may be privileged self-testing records.

►2. Information noted by a creditor in the credit application process about an applicant's age, race, color, religion, national origin, or sex is not privileged.◄

[*15(c) Appropriate Corrective Action*] ►*15(c) Appropriate corrective action*◄

1. The rule only addresses what corrective actions are required for a creditor to take advantage of the privilege in this section. A creditor may still be required to take other actions or provide additional relief if a formal finding of discrimination is made.

[*15(c)(1) General Requirement*α ►15(c)(1) *General requirement*◄

1. Appropriate corrective action is required even though no violation has been formally adjudicated or admitted by the creditor. In determining whether it is more likely than not that a violation occurred, a creditor must treat testers as if they are actual applicants for credit. A creditor may not refuse to take appropriate corrective action under this section because the self-test used fictitious loan applicants. The fact that a tester's agreement with the creditor waives the tester's legal right to assert a violation does not eliminate the requirement for the creditor to take corrective action, although no remedial relief for the tester is required under paragraph 15(c)(3).

[*15(c)(2) Determining the Scope of Appropriate Corrective Action*] ►15(c)(2) *Determining the scope of appropriate corrective action*◄

1. Whether a creditor has taken or is taking corrective action that is appropriate will be determined on a case-by-case basis. Generally, the scope of the corrective action that is needed to preserve the privilege is governed by the scope of the self-test. For example, a creditor that self-tests mortgage loans and discovers evidence of discrimination may focus its corrective actions on mortgage loans, and is not required to expand its testing to other types of loans.

2. In identifying the policies or practices that are the likely cause of the violation, a creditor might identify inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes. The extent and scope of a likely violation may be assessed by determining which areas of operations are likely to be affected by those policies and practices, for example, by determining the types of loans and stages of the application process involved and the branches or offices where the violations may have occurred.

3. Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:

i. If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the application was improperly denied and compensating such persons for out-of-pocket costs and other compensatory damages;

ii. Correcting institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;

iii. Identifying and then training and/or disciplining the employees involved;

iv. Developing outreach programs, marketing strategies, or loan products to serve more effectively segments of the lender's markets that may have been affected by the likely discrimination; and

v. Improving audit and oversight systems to avoid a recurrence of the likely violations.

[*15(c)(3) Types of Relief*] ►15(c)(3) *Types of relief*◄

[*Paragraph 15(c)(3)(ii)*] ►Paragraph 15(c)(3)(ii)◄

1. The use of pre-application testers to identify policies and practices that illegally discriminate does not require creditors to review existing loan files for the purpose of identifying and compensating applicants who might have been adversely affected.

2. If a self-test identifies a specific applicant that was subject to discrimination on a prohibited basis, in order to qualify for the privilege in this section the creditor must provide appropriate remedial relief to that applicant; the creditor would not be required under this paragraph to identify other applicants who might also have been adversely affected.

[*Paragraph 15(c)(3)(iii)*] ►Paragraph 15(c)(3)(iii)◄

1. A creditor is not required to provide remedial relief to an applicant that would not be available by law. An applicant might also be ineligible from obtaining certain types of relief due to changed circumstances. For example, a creditor is not required to offer credit to a denied applicant if the applicant no longer qualifies for the credit due to a change in financial circumstances, although some other type of relief might be appropriate.

[*15(d)(1) Scope of Privilege*] ►15(d)(1) *Scope of privilege*◄

1. The privilege applies with respect to any examination, investigation or proceeding by federal, state, or local government agencies relating to compliance with the Act or this regulation. Accordingly, in a case brought under the ECOA, the privilege established under this section preempts any inconsistent laws or court rules to the extent they might require disclosure of privileged self-testing data. The privilege does not apply in other cases, for example, litigation filed solely under a state's fair lending statute. In such cases, if a court orders a creditor to disclose self-test results, the disclosure is not a voluntary disclosure or waiver of the privilege for purposes of paragraph 15(d)(2); creditors may protect the information by seeking a protective order to limit availability and use of the self-testing data and prevent dissemination beyond what is necessary in that case. Paragraph 15(d)(1) precludes a party who has obtained privileged information from using it in a case brought under the ECOA, provided the creditor has not lost the privilege through voluntary disclosure under paragraph 15(d)(2).

[*15(d)(2) Loss of Privilege*] ►15(d)(2) *Loss of privilege*◄

[*Paragraph 15(d)(2)(i)*] ►Paragraph 15(d)(2)(i)◄

1. Corrective action taken by a creditor, by itself, is not considered a voluntary disclosure of the self-test report or results. For example, a creditor does not disclose the results of a self-test merely by offering to extend credit to a denied applicant or by inviting the applicant to reapply for credit. Voluntary disclosure could occur under this paragraph, however, if the creditor disclosed the self-test results in connection with a new offer of credit.

2. Disclosure of self-testing results to an independent contractor acting as an auditor or consultant for the creditor on compliance matters does not result in loss of the privilege.

[*Paragraph 15(d)(2)(ii)*] ►Paragraph 15(d)(2)(ii)◄

1. The privilege is lost if the creditor discloses privileged information, such as the results of the self-test. The privilege is not lost if the creditor merely reveals or refers to the existence of the self-test.

[*Paragraph 15(d)(2)(iii)*] ►Paragraph 15(d)(2)(iii)◄

1. A creditor's claim of privilege may be challenged in a court or administrative law proceeding with appropriate jurisdiction. In resolving the issue, the presiding officer may require the creditor to produce privileged information about the self-test.

[*Paragraph 15(d)(3) Limited use of Privileged Information*] ►Paragraph 15(d)(3) *Limited use of privileged information*◄

1. A creditor may be required to produce privileged documents for the purpose of determining a penalty or remedy after a violation of the ECOA or Regulation B has been formally adjudicated or admitted. A creditor's compliance with this requirement does not evidence the creditor's intent to forfeit the privilege.

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The uniform residential loan application form (FHLMC 65/FNMA 1003), including supplemental form (FHLMC 65A/FNMA 1003A), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated [May 1991] ►October 1992◄ may be used by creditors without violating this regulation even though the form's listing of race or national origin categories in the ''Information for Government Monitoring Purpose'' section differs from the classifications currently specified in § 202.13(a)(1). The classifications used on the FNMA–FHLMC form are those required by the U.S. Office of Management and Budget for notation of race and ethnicity by federal programs in their administrative reporting and statistical activities. [Creditors that are governed by the monitoring requirements of Regulation B (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to ensure that they do not collect

the information.] Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) or by the Home Mortgage Disclosure Act (HMDA) may use the form as issued, in compliance with the substitute program or HMDA.

2. *FHLMC/FNMA form—home-improvement loan application.* The home-improvement and energy loan application form (FHLMC 703/FNMA 1012), prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association and dated October 1986, complies with the requirements of the regulation for some creditors but not others because of the form's section ''Information for Government Monitoring Purposes.'' [Creditors that are governed by § 202.13(a) of the regulation (which limits collection to applications primarily for the purchase or refinancing of the applicant's principal residence) should delete, strike, or modify the data-collection section on the form when using it for transactions not covered by § 202.13(a) to assure that they do not collect the information.] Creditors that are subject to more extensive collection requirements by a substitute monitoring program under § 202.13(d) may use the form as issued, in compliance with that substitute program.

Appendix C—Sample Notification Forms

►1.◄ *Form C–9.* Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, August 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–20598 Filed 8–13–99; 8:45 am]

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Monday
August 16, 1999

Part III

Department of Agriculture

Agricultural Research Service

7 CFR Part 505

National Agricultural Library Fees for Loans and Copying; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 505

National Agricultural Library Fees for Loans and Copying

AGENCY: Agricultural Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) seeks comments on a proposed rule establishing a fee schedule for loans of materials, and establishing a fee schedule for copying of materials in the collections of the National Agricultural Library. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees.

DATES: Comments must be submitted on or before September 15, 1999.

ADDRESSES: Address all comments to Eileen McVey, Access Services Librarian, Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351. Telephone: 301–504–6503. Email: userfees@nal.usda.gov

FOR FURTHER INFORMATION CONTACT: Carol Ditzler, Head Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville MD 20705–2351.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlement, grants or user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements that will be imposed in implementation of this proposed rule have been submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Title: Collection of information regarding requests for loans or copies of materials in the collections of the NAL.

Summary: The purpose of this collection of information is to collect, either orally or by use of a form, contact information from persons who request loans, or copies, of materials in the collections of the NAL for which a fee will be charged. Information to be collected will include the name, address, telephone number, and signature of the representative of the party requesting the loan and/or copies of NAL material.

Need for the Information: The information is needed for NAL to deliver loans and/or copies from NAL collection materials and to keep records of parties to whom fees are chargeable and who are accountable for the custody of loaned NAL property.

Respondents: Respondents to the collection of information will be those libraries or other institutions or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent will have to furnish the information for each loan or copying request. The NAL expects to receive approximately 6,000 domestic and Canadian non-USDA requests for loans and approximately 22,000 domestic and Canadian non-USDA requests for copies of NAL materials per year.

Estimate of burden: The estimated burden on respondents for each loan or copying request is >.08 hours. The total annual reporting and record keeping burden on respondents will be de minimis.

Comments: Comments on this proposed collection of information may be submitted to Eileen McVey at the address listed above within 60 days after date of publication or to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Office for USDA. Reference should be made to the volume, page, and date of this **Federal Register** publication.

Background

Section 1410A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3125a), as added by section 1606(a) of Pub. L. 101–624, expanded existing statutory authorities for the NAL. In particular, section 1410A(e) authorized the NAL Director to make copies of NAL bibliographies, to make microforms and other reproductions of books and other library materials in USDA, to provide any other library and information products and services, and to sell those products and services at such price (not less than the total costs of disseminating the products and services) as the Secretary of Agriculture deems appropriate. Receipts from such sales must be deposited to the credit of appropriations available to the NAL and remain available until expended.

Currently, USDA regulations (7 CFR part 1, Appendix A) supply a fee schedule for copying of NAL materials requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. NAL proposes in this regulation to adopt a fee schedule for copying of NAL materials pursuant to interlibrary loan or other research requests, and to cover the costs of interlibrary loans of materials from NAL collections.

Fee Schedule for Loans of Materials From the NAL Collection

The NAL proposes to charge fees for interlibrary loans of original materials from the NAL collection to other non-Federal and non-USDA libraries and institutions in the United States and Canada. By original materials, it is meant that NAL will provide loans of original works, and not copies, except in rare instances where works are too fragile or valuable for shipment. Libraries are encouraged to obtain materials locally and to view the NAL as a library of last resort. Loans directly to individuals are not permitted.

A flat fee of $15.00 per loaned item will be charged. Fees generated will be used to recover actual processing costs and to offset general wear and tear on the collection when items are loaned. The $15.00 amount is based on a study of current library costs and market comparisons. There will be no charge for renewals.

Costs for replacement of lost or damaged materials will be the actual cost to purchase a replacement or a flat fee if the exact cost cannot be determined. A processing cost will be added to all lost or damaged materials.

Fee Schedule for Paper Copying, Duplication, and Reproduction Services From the NAL Collection

The NAL proposes to adopt a fee schedule, separate from the fee schedule applicable to FOIA requests under 7 CFR part 1, Appendix A, for paper copying, duplication, and reproduction services provided to non-USDA and non-federal libraries and institutions in the United States. These services will be provided only in response to an interlibrary loan request from a library. Use of the interlibrary loan system ensures that NAL receives the request in an appropriate form and format for response. In some exceptions, services will be provided for requests from individuals who have not been able to obtain materials through their local resources or who have made special arrangements with the Special Collections section using their forms.

Copying of articles is subject to a maximum limitation of 50 pages per article for purposes of copyright compliance. This limitation is based on the CONTU Guidelines (National Commission on New Technological Uses of Copyright Works) and the Agency's interpretation of the applicable provisions of 17 U.S.C. chapter 1.

The NAL proposes to charge in its schedule of fees for photocopying of paper materials and paper copying of microfiche or microfilm. NAL is switching from a per page-based charge to a per item flat fee because, historically, the average request is between 10 and 20 pages. Establishing a flat fee allows the customer to estimate their costs more effectively and allows the library to eliminate the cost of multiple steps currently necessary in determining pro-rated fees. Fees established are based on actual costs (staffing, contract costs, supplies, copier maintenance, normal wear and tear on the collection, delivery costs, etc.) as well as based on a review of comparable fees across the nation charged by other research and academic libraries. All fees will apply to non-USDA and non-federal library requests that meet standard interlibrary loan format requirements and apply to copying of materials from the NAL collections only.

NAL also proposes a flat rate for the costs of duplication of NAL owned microfiche and microfilm. Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product, plus a flat rate for preparation costs.

Payment Submission Requirements

The National Technical Information Service (NTIS) within the United States Department of Commerce provides a number of services to Federal Agencies, one of which is billing and collection services. NAL currently uses and proposes to use NTIS as the preferred method for invoicing and payment of fees under this fee schedule. Use of NTIS by NAL is preferred because it is the only agency providing this service to Federal offices. NAL encourages institutional users to establish deposit accounts with NTIS. Payment for services will be made by check , money order or credit card in U.S. funds directly to the NTIS upon receipt of invoice from NTIS.

Subject to service charges for the actual costs of performing the invoicing service, funds received by NTIS will be returned to NAL to the credit of the appropriation account charged with the costs of providing the loan or copying service.

List of Subjects in 7 CFR Part 505

Agriculture, Agricultural research, Libraries, Research, User fees.

For the reasons set out in the preamble, chapter V of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 505 is added to read as follows:

PART 505—NATIONAL AGRICULTURAL LIBRARY FEES FOR LOANS AND COPYING

Sec.
505.1 Scope and purpose.
505.2 Fees for loans of materials in library collections.
505.3 Fees for copying, duplicating, and reproduction of materials in library collections.
505.4 [Reserved].
505.5 [Reserved].
505.6 [Payment of fees].

Authority: 5 U.S.C. 301; 7 U.S.C. 3125a.

§ 505.1 Scope and purpose.

These regulations establish fees for loans, paper copying, duplication, or reproduction of materials in the collections of the National Agricultural Library (NAL) within the United States Department of Agriculture (USDA).

§ 505.2 Fees for loans of materials in library collections.

(a) NAL will make loans of original materials from its collections, and charge fees for such loans, to other non-Federal and non-USDA libraries and institutions in the United States and Canada only. Loans will not be made directly to individuals.

(b) Loans will be made at a flat fee of $15.00 per loaned item.

(c) Cost for replacement of lost or damaged items will be the actual cost to purchase a replacement plus a $50.00 processing fee; or if the cost cannot be determined, a flat rate of $75.00 for monographs or $150.00 for audiovisuals per item, plus a $50.00 processing fee.

(d) All services in this section will incur a billing surcharge per invoice generated in addition to the above fees which may change as vendor's charges change. This fee, currently $10.00, is billed as a direct cost recovery based on charges to the library by the billing vendor. Interlibrary loan requests submitted by participants in the ILL Fee Management (IFM) program under the Online Computer Library Center, Inc. (OCLC) will not incur the billing surcharge as their activities will not generate an invoice.

§ 505.3 Fees for paper copying, duplicating, and reproduction of materials in library collections.

(a) Photocopy reproduction of paper copy will be set as a flat fee of $13.00 for domestic requests and $16.00 for international requests for each document requested with a maximum of 50 pages per article for copyright compliance. Materials delivered to international addresses via the Internet will be charged at the domestic rate. Photocopy reproduction of paper copy that requires special handling due to size or condition will incur special handling fees to recover costs at $20.00 per half hour or fraction thereof.

(b) Paper copies of microfilm or microfiche will be produced at a flat fee of $13.00 for requests delivered domestically and $16.00 for requests requiring delivery to a international address. This charge is for each document requested with a maximum of 50 pages per article for copyright compliance.

(c) Duplication of NAL owned microfiche will be charged a flat fee of $13.00 per each 5 microfiche duplicated or fraction thereof. Duplication of NAL owned microfilm will be charged a flat fee of $20.00 for each reel produced.

(d) Photographic services from NAL Special Collections will be charged at cost for reproduction of the photo product (slides, transparencies, etc.) plus a preparation fee of $25.00 per half hour or fraction thereof.

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§ 505.4–505.5 Reserved.

§ 505.6 Payment of fees.

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Done at Washington, DC, this 10th day of August, 1999.

Dr. Edward B. Knipling,

Associate Administrator, Agricultural Research Service.

[FR Doc. 99–21139 Filed 8–13–99; 8:45 am]

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federal register

Monday
August 16, 1999

Part IV

The President

Executive Order 13134—Developing and Promoting Biobased Products and Bioenergy

Federal Register

Vol. 64, No. 157

Monday, August 16, 1999

Presidential Documents

Title 3—

The President

Executive Order 13134 of August 12, 1999

Developing and Promoting Biobased Products and Bioenergy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets, it is hereby ordered as follows:

Section 1. *Policy*. Current biobased product and bioenergy technology has the potential to make renewable farm and forestry resources major sources of affordable electricity, fuel, chemicals, pharmaceuticals, and other materials. Technical advances in these areas can create an expanding array of exciting new business and employment opportunities for farmers, foresters, ranchers, and other businesses in rural America. These technologies can create new markets for farm and forest waste products, new economic opportunities for underused land, and new value-added business opportunities. They also have the potential to reduce our Nation's dependence on foreign oil, improve air quality, water quality, and flood control, decrease erosion, and help minimize net production of greenhouse gases. It is the policy of this Administration, therefore, to develop a comprehensive national strategy, including research, development, and private sector incentives, to stimulate the creation and early adoption of technologies needed to make biobased products and bioenergy cost-competitive in large national and international markets.

Sec. 2. *Establishment of the Interagency Council on Biobased Products and Bioenergy*. (a) There is established the Interagency Council on Biobased Products and Bioenergy (the ''Council''). The Council shall be composed of the Secretaries of Agriculture, Commerce, Energy, and the Interior, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Assistant to the President for Science and Technology, the Director of the National Science Foundation, the Federal Environmental Executive, and the heads of other relevant agencies as may be determined by the Co-Chairs of the Council. Members may serve on the Council through designees. Designees shall be senior officials who report directly to the agency head (Assistant Secretary or equivalent).

(b) The Secretary of Agriculture and the Secretary of Energy shall serve as Co-Chairs of the Council.

(c) The Council shall prepare annually a strategic plan for the President outlining overall national goals in the development and use of biobased products and bioenergy in an environmentally sound manner and how these goals can best be achieved through Federal programs and integrated planning. The goals shall include promoting national economic growth with specific attention to rural economic interests, energy security, and environmental sustainability and protection. These strategic plans shall be compatible with the national goal of producing safe and affordable supplies of food, feed, and fiber in a way that is sustainable and protects the environment, and shall include measurable objectives. Specifically, these strategic plans shall cover the following areas:

(1) biobased products, including commercial and industrial chemicals, pharmaceuticals, products with large carbon sequestering capacity, and other materials; and

(2) biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) To ensure that the United States takes full advantage of the potential economic and environmental benefits of bioenergy, these strategic plans shall be based on analyses of: (1) the economic impacts of expanded biomass production and use; and (2) the impacts on national environmental objectives, including reducing greenhouse gas emissions. Specifically, these plans shall include:

(1) a description of priorities for research, development, demonstration, and other investments in biobased products and bioenergy;

(2) a coordinated Federal program of research, building on the research budgets of each participating agency; and

(3) proposals for using existing agency authorities to encourage the adoption and use of biobased products and bioenergy and recommended legislation for modifying these authorities or creating new authorities if needed.

(e) The first annual strategic plan shall be submitted to the President within 8 months from the date of this order.

(f) The Council shall coordinate its activities with actions called for in all relevant Executive orders and shall not be in conflict with proposals advocated by other Executive orders.

Sec. 3. *Establishment of Advisory Committee on Biobased Products and Bioenergy.* (a) The Secretary of Energy shall establish an ''Advisory Committee on Biobased Products and Bioenergy'' (''Committee''), under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), to provide information and advice for consideration by the Council. The Secretary of Energy shall, in consultation with other members of the Council, appoint up to 20 members of the advisory committee representing stakeholders including representatives from the farm, forestry, chemical manufacturing and other businesses, energy companies, electric utilities, environmental organizations, conservation organizations, the university research community, and other critical sectors. The Secretary of Energy shall designate Co-Chairs from among the members of the Committee.

(b) Among other things, the Committee shall provide the Council with an independent assessment of:

(1) the goals established by the Federal agencies for developing and promoting biobased products and bioenergy;

(2) the balance of proposed research and development activities;

(3) the effectiveness of programs designed to encourage adoption and use of biobased products and bioenergy; and

(4) the environmental and economic consequences of biobased products and bioenergy use.

Sec. 4. *Administration of the Advisory Committee.* (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Energy shall serve as the secretariat for, and provide the financial and administrative support to, the Committee.

(b) The heads of agencies shall, to the extent permitted by law, provide to the Committee such information as it may reasonably require for the purpose of carrying out its functions.

(c) The Committee Co-Chairs may, from time to time, invite experts to submit information to the Committee and may form subcommittees or working groups within the Committee to review specific issues.

Sec. 5. *Duties of the Departments of Agriculture and Energy.* The Secretaries of the Departments of Agriculture and Energy, to the extent permitted by law and subject to the availability of appropriations, shall each establish a working group on biobased products and biobased activities in their respective Departments. Consistent with the Federal biobased products and bioenergy strategic plans described in sections 2(c) and (d) of this order, the working groups shall:

(1) provide strategic planning and policy advice on the Department's research, development, and commercialization of biobased products and bioenergy; and

(2) identify research activities and demonstration projects to address new opportunities in the areas of biomass production, biobased product and bioenergy production, and related fundamental research.

The chair of each Department's working group shall be a senior official who reports directly to the agency head. If the Secretary of Agriculture or Energy serves on the Interagency Council on Biobased Products and Bioenergy through a designee, the designee should be the chair of the Department's working group.

Sec. 6. *Establishment of a National Biobased Products and Bioenergy Coordination Office.* Within 120 days of this order, the Secretaries of Agriculture and Energy shall establish a joint National Biobased Products and Bioenergy Coordination Office (''Office'') to ensure effective day-to-day coordination of actions designed to implement the strategic plans and guidance provided by the Council and respond to recommendations made by the Committee. All agencies represented on the Council, or that have capabilities and missions related to the work of the Council, shall be invited to participate in the operation of the Office. The Office shall:

(a) serve as an executive secretariat and support the work of the Council, as determined by the Council, including the coordination of multi-agency, integrated research, development, and demonstration (''RD&D'') activities;

(b) use advanced communication and computational tools to facilitate research coordination and collaborative research by participating Federal and nonfederal research facilities and to perform activities in support of RD&D on biobased product and bioenergy development, including strategic planning, program analysis and evaluation, communications networking, information and data dissemination and technology transfer, and collaborative team building for RD&D projects; and

(c) facilitate use of new information technologies for rapid dissemination of information on biobased products and bioenergy to and among farm operators; agribusiness, chemical, forest products, energy, and other business sectors; the university community; and public interest groups that could benefit from timely and reliable information.

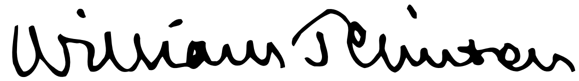
Sec. 7. *Definitions.* For the purposes of this order: (a) The term ''biomass'' means any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials.

(b) The term ''biobased product,'' as defined in Executive Order 13101, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

(c) The term ''bioenergy'' means biomass used in the production of energy (electricity; liquid, solid, and gaseous fuels; and heat).

(d) The term ''old growth timber'' means timber of a forest from the late successional stage of forest development. The forest contains live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old growth varies significantly by forest type and from one biogeoclimatic zone to another.

Sec. 8. *Judicial Review.* This order does not create any enforceable rights against the Unites States, its agencies, its officers, or any person.



THE WHITE HOUSE,
August 12, 1999.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2565/P.L. 106–46

To clarify the quorum requirement for the Board of Directors of the Export-Import Bank of the United States. (Aug. 11, 1999; 113 Stat. 227)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

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